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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
LIN 03 273 56001

Office: NEBRASKA SERVICE CENTER

Date: AUG 05 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Syria, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had failed to comply with filing requirements and to submit requested evidence. *Decision of the Director*, dated June 10, 2004.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

. . . shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival. . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on October 9, 2003. However, the petitioner did not submit a signed Biographic Information sheet, Form G-325, for the beneficiary, as indicated by the filing instructions for the Form I-129F.

On March 25, 2004, the director issued a request for evidence asking the petitioner to submit the missing Form G-325. In addition, as the petitioner had indicated that the beneficiary was his cousin, the director also requested further information regarding the closeness of this relationship. Noting that first cousins were prohibited from marrying in Michigan, the director stipulated that if the beneficiary was the petitioner's first cousin, the petitioner would need to provide information regarding where he and the beneficiary could be married legally.

In response, the petitioner submitted another G-325 for himself and copied pages from the California Family Code related to marriage. He provided no further information.

On appeal, the petitioner's representative asks that CIS reconsider its denial of the petitioner's Form I-129F as this was the first time that he had filed such a form and was unaware of immigration procedures, including that he had to explain the degree of his relationship to the beneficiary. However, the petitioner's failure to comply with the filing requirements for the Form I-129F and provide the information sought by the director's request for evidence cannot be excused.

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) as follows:

. . . Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations requiring its submission

Further discussion of the requirement that applications and petitions be completed and documented as specified in the instructions accompanying these forms is found at 8 C.F.R. § 103.2(b)(1):

An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filled with any initial evidence required by regulation or by the instructions on the form.

The director's authority to request a petitioner to submit additional evidence is found at 8 C.F.R. § 103.2(b)(8)

Request for evidence. . . . [W]here . . . initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence

In cases where a petitioner does not submit all the evidence requested by a director, regulation requires that a decision be made based on the record. Further, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denial. 8 C.F.R. § 103.2(b)(14).

At the time of filing, the petitioner did not submit a completed and signed Form G-325A for the beneficiary as required in the filing instructions for the Form I-129F. He also failed to do so in response to the director's request for evidence. He has, therefore, not met the requirements for filing a Form I-129F. Further, the petitioner did not respond to the director's request for information regarding the closeness of his blood relationship to the beneficiary, nor indicate the state where his marriage would occur if the closeness of that relationship precluded being married in Michigan, the petitioner's home state. His failure to submit the information requested by the director closed off a material line of inquiry into the ability of the petitioner to conclude a legal marriage within 90 days of the beneficiary's arrival in the United States. Accordingly, the appeal will be dismissed.

The petitioner's representative states that the petitioner was unaware of the requirements for filing a Form I-129F and of the need to provide information regarding the degree of his family relationship to the beneficiary.

Such assertions, even if they provided a basis for appeal, are not persuasive. On March 25, 2004, the director specifically notified the petitioner that separate signed Form G-325s were needed for him and the beneficiary, and that he required more information about the closeness of the petitioner's family relationship to the beneficiary, as well as information on where they could be married if precluded from marrying in Michigan. The petitioner was given 12 weeks in which to provide a response, ample time in which to provide the director with the requested documentation and information.

The denial of the petition is without prejudice. If the petitioner believes he is able to meet the requirements of section 214(d) of the Act, he may file a new Form I-129F petition on the beneficiary's behalf.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.