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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 06 2010

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, as the fiancé(e) of a United States citizen pursuant to § 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 because the petitioner failed to submit evidence to support his claim that he merited a favorable exercise of discretion regarding his request for a waiver of the limitations against subsequent fiancée petitions pursuant to section 214(d)(2)(B) of the Act. On appeal, the petitioner submits a statement why his request for a waiver should be approved.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

> Subject to subsections (d) and (p) of section 214, an alien who -
>
> (i) is the fiancée or fiancé of a citizen of the United States . . . and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission.

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), states in pertinent part that a fiancé(e) petition:

> [s]hall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 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 . . . .

On January 5, 2006, the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006), 8 U.S.C. § 1375a. Title VII of VAWA 2005 is entitled "Protection of Battered and Trafficked Immigrants," and contains Subtitle D, "International Marriage Broker Regulation" (IMBRA), codified at section 214(d)(2) of the Act, which states, in pertinent part:

> (A) Subject to subparagraphs (B) and (C), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that--
>
> (i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and
>
> (ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.
>
> (B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. . . .

In sum, if a petitioner has filed two or more K-1 visa petitions at any time in the past, or previously had a K-1 visa petition approved within two years prior to the filing of the current petition, the petitioner must request a waiver.

On June 16, 2010, the director issued a request for evidence (RFE), advising the petitioner that U.S. Citizenship and Immigration Services (USCIS) records showed that he had previously filed three fiancee petitions for other individuals. The RFE notified the petitioner that he was subject to the IMBRA bar against multiple filings and would have to submit additional documentation to request a waiver of the filing limitations. In his response, the petitioner submitted a letter, dated July 5, 2010, stating that he previously filed three I-129F petitions for the following women: [redacted] The petitioner also indicated that: his 1999 marriage to [redacted] ended in divorce in 2002; he decided not to marry [redacted] and thus sent a letter to USCIS in 2005 to cancel the petition; and he decided not to marry [redacted] after her arrival in the United States, whereupon she returned to China on August 22, 2007.

The director denied the nonimmigrant visa petition because the record did not establish that the petitioner had complied with the requirements under the IMBRA. Specifically, the director determined that the petitioner did not merit a favorable exercise of discretion because he submitted no evidence to support his assertions regarding his three prior fiancée petitions. On appeal, the petitioner requests a waiver and submits a letter, dated August 24, 2010, which is a copy of his previously submitted letter dated July 5, 2010, submitted in response to the director's RFE.

The record reflects that the petitioner filed a petition for [redacted] on August 3, 1998, and the petition was approved, valid from September 8, 1998 to January 7, 1999. The record contains a divorce decree indicating that the petitioner and [redacted] were divorced on December 11, 2003. The record also reflects that the petitioner filed a petition for [redacted] on December 14, 2004, and the petition was approved, valid from February 4, 2005 to June 3, 2005. The petitioner states that, due to a family tragedy, [redacted] was unable to leave China, and thus they decided not to marry, and that in May 2005, the California Service Center was notified to cancel the petition. The record reflects that the petition was returned by the Department of State for review in 2008, and terminated in 2009. The record also reflects that the petitioner filed a petition for [redacted] on March 28, 2006, and the petition was approved, valid from September 8, 2006 to January 8, 2007. The petitioner states that, due to deception on the part of [redacted] they decided not to marry after her arrival in the United States, and that [redacted] returned to China on August 22, 2007.

The petitioner asserts that he should be granted a waiver "due to the unusual circumstances related to [redacted] daughter's injury, and the deception of [redacted]." While the petitioner claims to have sent a letter to the California Service Center in 2005, to cancel the petition that he had filed on [redacted] behalf, he does not state that he notified USCIS of his decision not to marry [redacted] Moreover, the petitioner submits no evidence in support of his assertion that [redacted] returned to China on August 22, 2007. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In addition, it appears that the petitioner has a pattern of filing and withdrawing petitions,

and/or obtaining approvals of petitions every few years. Upon review of the evidence in its entirety, the petitioner has failed to demonstrate that he merits a favorable exercise of discretion to waive the filing limitations imposed by IMBRA.. Thus, the petitioner's request for a waiver is denied.

Beyond the decision of the director, the record is deficient because it does not contain the following: original statements from the petitioner and the beneficiary or other evidence that establishes their mutual intent to marry within 90 days of the beneficiary's entry into the United States in K-1 status[1]; a passport-style, color photograph for the beneficiary (the previously submitted photograph is too large); and evidence that the petitioner and the beneficiary met within the two-year period immediately preceding the filing of the petition. We note the copy of the petitioner's U.S. passport, which shows that he made trips to China and Thailand, as well as his claims that he and the beneficiary spent time together during these trips. The petitioner has not, however, submitted any evidence, such as photographs, to establish that he and the beneficiary were together during the claimed periods of time. .

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, he should consult the instructions to the Form I-129F to understand the specific documents that he should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his home.

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

ORDER: The appeal is dismissed. The petition is denied.

[1] The instructions to the I-129F petition at pages 2 and 3, items #5 and #6, state that the above described documentation must be submitted for both the petitioner and the beneficiary.