identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

b6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 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.

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 The director's decision shall be withdrawn and the petition remanded for entry of a new decision

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ethiopia, 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 nonimmigrant visa petition because the petitioner did not establish that she had a bonafide premarital relationship with the beneficiary. On appeal, the petitioner submits a brief and additional evidence.

At the outset, it is noted that another nonimmigrant visa petition filed by the petitioner on behalf of the beneficiary was initially approved on February 9, 2009. On May 26, 2009, the petition was returned from the U.S. Consular Officer in Addis Ababa, Ethiopia, with a recommendation for revocation, as it appeared that the relationship between the petitioner and the beneficiary existed merely for immigration purposes. On July 17, 2009, the director terminated all action on the petition pursuant to 8 C.F.R. § 214.2(k)(5), as the period of validity of the petition had expired and the petition would not be revalidated.

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 . . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

> (1) result in extreme hardship to the petitioner; or
>
> (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the

> required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on October 2, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between October 2, 2007 and October 2, 2009.

When she filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether she and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner stated, in part, that she and the beneficiary knew one another when they both lived in Addis Ababa, Ethiopia, and that they became engaged in 2007, when she returned to Ethiopia for a visit.

On May 4, 2010, the director issued a notice of intent to deny (NOID), requesting evidence of the validity of the premarital relationship between the petitioner and the beneficiary.

In her response to the director's NOID, the petitioner submitted a personal letter dated May 10, 2010.

The director denied the nonimmigrant visa petition because the petitioner did not establish that she had a bonafide premarital relationship with the beneficiary.

On appeal, counsel states, in part, that the director "failed to consider Petitioner's credible written testimony that she has a bona fide relationship with [the beneficiary]." Counsel states that the petitioner's friend arranged a meeting between the petitioner and the beneficiary when the petitioner traveled to Ethiopia after her divorce in 2007, and "the couple remains committed to each other and still intends to make a life together [as] clearly shown by the ongoing and continuous contact between the couple, primarily by telephone . . . letters and cards." Counsel also states that the petitioner's ex-husband resides with her "based upon necessity and primarily for the benefit of the small children they share custody of jointly."

Section 214(d) of the Act states that USCIS *shall* approve the Form I-129F when a petitioner submits evidence to establish that he/she and the beneficiary have met within the two-year period immediately preceding the filing of the petition, have a bonafide intention to marry, and are legally able and willing to marry within 90 days of the beneficiary's arrival in the United States. In denying the instant petition, the director appears to have imposed an additional requirement on the petitioner – establishing a bonafide premarital relationship with the beneficiary. However, no such requirement exists for the approval of a Form I-129F, and the AAO finds the director to have erred in imposing it. While section 214(d) of the Act stipulates that the petitioner must establish that she and the beneficiary have a

bonafide intention to marry, this language is not synonymous with a requirement that the petitioner establish a bonafide premarital relationship with the beneficiary.

In reaching its decision, the AAO notes the concerns expressed by the consular officer and, subsequently, the director regarding the engagement of the petitioner and the beneficiary on the petitioner's first visit to Ethiopia, the beneficiary's lack of knowledge concerning the petitioner, and the living arrangements of the petitioner and her ex-husband. However, as just noted, section 214(d) of the Act does not require that USCIS evaluate the bona fides of the fiancé(e) relationship before approving the petitioner's Form I-129F. As such, the petitioner has overcome the director's objections.

The petition may not be approved, however, as the record still does not contain the following required documentation: a passport-style, **color** photograph for the beneficiary; and an original statement from the beneficiary or other evidence that establishes his intent to marry the petitioner within 90 days of his entry into the United States in K-1 status. In view of the foregoing, the director's decision shall be withdrawn and the petition remanded for the director to obtain the required documentation, as noted above. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision.