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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: OCT 18 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:

[redacted]

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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Afghanistan, 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 record contains no evidence that the petitioner and the beneficiary are legally able to conclude a valid marriage, as they are first cousins and it is unlawful for first cousins to marry in the State of [redacted]. On appeal, the petitioner's representative asserts that the petitioner and the beneficiary have no blood relationship. The petitioner's representative also states, "The use of the word cousin on [the petition] in no way indicated a blood relationship to the petitioner, but was used as a title of respect, consistent with Afghan culture." The following items are submitted as supporting documentation: a letter dated August 5, 2010, from the petitioner's representative; an affidavit from the petitioner, dated July 28, 2010; affidavits from the petitioner's acquaintances, [redacted] and [redacted], dated August 2, 2010 and July 29, 2010, respectively; and an affidavit from the petitioner's family relative, [redacted] dated August 2, 2010.

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 . . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on February 8, 2010. Therefore, the petitioner and the beneficiary were required to have met in person between February 8, 2008 and February 8, 2010.

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 that she and the beneficiary had an engagement party in Afghanistan.

On April 14, 2010, the director issued a request for evidence (RFE), requesting that the petitioner identify where in the United States she and the beneficiary planned to marry, and specify how she and the beneficiary are related.

In her response to the director's RFE, the petitioner submitted a statement indicating that she and the beneficiary plan to marry in [redacted], and that the beneficiary is her cousin, specifically, her aunt's son.

The director denied the nonimmigrant visa petition because the record contains no evidence that the petitioner and the beneficiary are legally able to conclude a valid marriage, as they are first cousins, and it is unlawful for first cousins to marry in the State of [redacted]

The AAO acknowledges the assertions by the petitioner's representative, the petitioner, and her acquaintances that the petitioner and the beneficiary have no blood relationship, and that the use of the word "cousin" was only to show respect, in accordance with Afghani culture. The petitioner, however, must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). As discussed above, the petitioner indicated in response to the director's RFE that she and the beneficiary were first cousins and intended to get married in the State of [redacted].[1] In view of the foregoing, the petition may not be approved because the petitioner has not demonstrated that she and the beneficiary can lawfully marry in the State of [redacted]. As a result, the beneficiary cannot benefit from the instant petition. Therefore, the appeal will be dismissed and the petition will be denied.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, she should consult the instructions to the Form I-129F to understand the specific documents that she 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 she may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to her 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.

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[1] A review of the website for the National Conference of State Legislatures (NCSL) at [redacted] finds that a first-cousin marriage is prohibited in the State of Idaho.