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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D6

Date: APR 12 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

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 immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision.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 Cambodia, 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 filing a fiancée petition within two years of filing a previously approved fiancée petition, pursuant to section 214(d)(2)(B) of the Act. On appeal, the petitioner submits a statement and additional evidence.

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 May 25, 2010, the director issued a Notice of Intent to Deny (NOID), advising the petitioner that U.S. Citizenship and Immigration Services (USCIS) records showed that he had another fiancée petition approved on behalf of the beneficiary within two years of the March 29, 2010 filing date of the instant petition. Specifically, I-129F petition, WAC-09-053-50263, was initially approved on June 16, 2009 on behalf of the beneficiary. On January 6, 2010, the approved petition was forwarded to the National Visa Center in Portsmouth, New Hampshire, by the U.S. Embassy in Phnom Penh, Cambodia, with a conclusion by the Consular Section Chief that the claimed relationship was not bona fide. On May 13, 2010, 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. The May 25, 2010 NOID notified the petitioner that he was subject to the IMBRA bar against multiple filings, that he would have to submit additional documentation to request a waiver of the filing limitations, and that he had failed to demonstrate a bona fide relationship with the beneficiary. In his response, the petitioner submitted additional evidence including a notarized statement dated March 23, 2010, explaining how he met the beneficiary and decided to marry her.

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 address the issues discussed in the NOID, he failed to request a waiver of the filing limitations and an explanation as to why he should be granted the waiver, and he had not submitted evidence to establish the fiancée relationship. On appeal, the petitioner states that he does not agree with the director's decision, as he and the beneficiary share a "real" fiancé(e) relationship. As supporting documentation, the petitioner submits: a birth certificate and translation to show that he and his fiancée have a baby girl who was born on July 9, 2010; baby photographs; and a photograph of the petitioner with the beneficiary.

At the outset, it is noted that 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 preceding the filing of the Form I-129F, 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. While the Department of State's interview of the petitioner and the beneficiary raised questions regarding the bona fides of their relationship because they were unable to provide basic facts about each other, the requirement to establish a bona fide relationship does not exist 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 he and the beneficiary have a bonafide intention to marry, this language is not synonymous with a requirement that the petitioner establish the bona fides of their relationship.

In reaching its decision, the AAO notes the concerns expressed by the consular officer and, subsequently, the director regarding the petitioner and the beneficiary's lack of knowledge of each other and the bona fides of their relationship. However, as just noted, section 214(d) of the Act does not

require the petitioner and the beneficiary to know details of each other, such as the beneficiary knowing that the petitioner was unemployed, or to explain such issues as to why the petitioner decided to marry the beneficiary and why the correspondence between them was scant, nor that USCIS evaluate such issues before approving the petitioner's Form I-129F. Accordingly, the reservations expressed by the consular officer and the director are not probative for the purposes of these proceedings.

The director's denial of the instant petition is based, in part, on the petitioner's failure to submit sufficient evidence to establish a bona fide relationship with the beneficiary. As the director erred in imposing such a requirement on the petitioner, the director's denial of the petition on the basis of the petitioner's failure to establish the bona fides of his relationship with the beneficiary was in error and is hereby withdrawn. The petition may not be approved, however, because the record still does not contain a request for a waiver of the filing limitations under the IMBRA and 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] Accordingly, the AAO shall remand the matter to the Director so that she can provide the petitioner with an opportunity to submit all of the required documentation. The director may request any additional information or evidence that she deems necessary. Upon receipt of all of the required documentation, the director must enter a new decision, determining whether the petitioner has met the requirements under the IMBRA and section 101(a)(15)(K) of the Act. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision that, if adverse to the petitioner, is to be certified to the AAO for review.

[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.