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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

D6

[redacted]

DATE: MAR 12 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

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, with a fee of $630. 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 service center director (the director) denied the nonimmigrant visa petition and 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 citizen of the Republic of Korea, 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 on the basis of her determination that the petitioner failed to: (1) establish he met the beneficiary in person within the two-year period immediately preceding the filing of the petition or his eligibility for exemption from that requirement; and (2) submit a statement from the beneficiary regarding her intent to marry the petitioner within 90 days of her entry into the United States as his fiancée. On appeal, the petitioner submits additional evidence.

Applicable Law

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

> subject to subsections (d) and (p) of section 214, [is] 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:

> shall 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, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

The statutory requirement for in-person meeting between the petitioner and the beneficiary is further explained at 8 C.F.R. § 214.2(k)(2), which states the following:

> The petitioner shall establish to the satisfaction of the director that the petitioner and K-1 beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the K-1 beneficiary' 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. Failure to establish that the petitioner and K-1 beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and K-1 beneficiary have met in person.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or the petitioner does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a Petition for Alien Fiancé(e) (Form I-129F), including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.[1]

Pertinent Facts and Procedural History

The petitioner filed the instant petition on February 14, 2011. The director issued a subsequent request for additional evidence (RFE), and the petitioner submitted a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on September 28, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

In-Person Meeting Within The Two Years Immediately Preceding The Filing Of The Petition

Although the petitioner stated on the Form I-129F that he personally met the beneficiary during the two-year period immediately preceding the filing of the petition, he submitted no evidence to establish the claimed meeting actually took place. On appeal, the petitioner submits a brief letter in which he claims he first met the beneficiary at a party held in her sister's home and a document which consists of a checklist of questions. However, the petitioner does not submit any evidence to support his claim, such as copies of passport entry and exit stamps or copies of airline tickets, or any other relevant evidence to demonstrate that the requisite in-person meeting took place during the two years immediately preceding the filing of the petition. Nor does the record establish that the petitioner merits exercise of the discretionary waiver of this requirement described at section 214(d)(1) of the Act and 8 C.F.R. § 214.2(k)(2).

[1] The *Instructions* to the Form I-129F may be found online at the USCIS website at http://www.uscis.gov/files/form/i-129finstr.pdf (accessed February 16, 2012).

Beneficiary's Intent to Marry the Petitioner

In both the RFE and the decision denying the petition, the director notified the petitioner of the requirement for the beneficiary's statement of her intent to marry the petitioner. The record still lacks an original statement from the beneficiary regarding the couple's relationship and her intent to marry the petitioner.

Conclusion

On appeal, the petitioner has failed to overcome the director's grounds for denying the petition and has not established that he met the beneficiary in person within the two-year period of time immediately preceding the filing of the petition or that he qualifies for a discretionary waiver from that requirement. On appeal, the petitioner has also failed to submit the requisite statement from the beneficiary establishing her intent to marry the petitioner. Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(K) of the Act and this petition must remain denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.