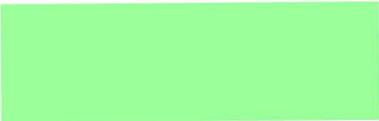




U.S. Citizenship
and Immigration
Services

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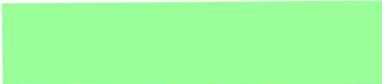


Date: **MAY 13 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

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:

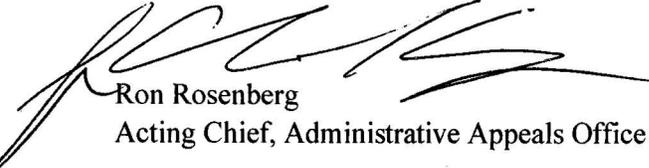
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and a citizen of Mexico, as the fiancée 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 had failed to: (1) establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition; or (2) submit sufficient evidence that meeting the beneficiary in person would have been a hardship for him. On appeal, the petitioner provides a statement.

Applicable Law

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:

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. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2):

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's foreign culture or social 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 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.

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on August 17, 2011. Therefore, the petitioner and beneficiary were required to have met between August 17, 2009 and August 16, 2011. On the Form I-129F, the petitioner indicated “yes” to the question about whether he and the beneficiary had met in person within the two-year period preceding the filing of the petition. The petitioner submitted an addendum to the Form I-129F, in which he stated that he first met the beneficiary over three years prior and that they have been dating ever since. The petitioner also submitted photographs of himself and the beneficiary dated prior to the required two-year meeting period.

On January 24, 2012, the director issued a request for evidence (RFE) to the petitioner, requesting him to provide additional evidence demonstrating compliance with the meeting requirement or evidence that compliance would cause him extreme hardship, or would violate strict and long-established customs of the beneficiary’s foreign culture or social practice. In response to the RFE, the petitioner submitted an additional statement and photographs of himself together with the beneficiary. In his statement, the petitioner explained how he met the beneficiary and provided further details about their relationship. The photographs were either undated or dated after the petitioner filed the Form I-129F.

On June 4, 2012, the director denied the petition, concluding that the petitioner did not establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition, or establish that meeting the beneficiary in person would have been a hardship for him.

Analysis

On appeal, the petitioner asserts that he has been in a relationship with the beneficiary for more than four years and that he practically lives with her in Mexico. Additional evidence was not submitted.

Upon a full review of the record, including the petitioner’s statement provided on appeal, we find no error in the director’s decision to deny the petition. The petitioner failed to provide evidence that he visited the beneficiary during the requisite two-year period between August 17, 2009 and August 16, 2011. The photographs submitted are either undated or dated outside of this two-year period and therefore do not establish that the petitioner and the beneficiary met during the requisite period. Furthermore, the petitioner is not claiming, nor does the record reflect, that he is eligible for the exemption from the meeting requirement under section 214(d)(1) of the Act, as prescribed by the regulation at 8 C.F.R. § 214.2(k)(2).

Conclusion

The statutorily required personal meeting between the petitioner and the beneficiary did not occur during the requisite time period and the petitioner has not demonstrated that he is eligible for a discretionary waiver of such a requirement. Consequently, the beneficiary may not benefit from the instant petition and it must remain denied. The appeal is, therefore, dismissed. As stated at 8 C.F.R.

§ 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition with evidence that the petitioner and the beneficiary have met in person during the requisite period.

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

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