

(b)(6)



U.S. Citizenship
and Immigration
Services



Date: **MAY 31 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:



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 fiancé 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 she 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 her. The director also denied the petition because the petitioner failed to establish the legal termination of her prior marriage. On appeal, the petitioner, through counsel, provides a brief statement on the Form I-290B Notice of Appeal and additional evidence.

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, as where marriages are traditionally arranged by the parties 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.

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 January 3, 2012. Therefore, the petitioner and beneficiary were required to have met between January 3, 2010 and January 3, 2012. On the Form I-129F, the petitioner indicated "yes" to the question about whether she and the beneficiary had met in person within the two-year period preceding the filing of the petition. The petitioner further stated that she met the beneficiary in 1999 and lived with him from 2001 up to the year 2010. As evidence, the petitioner submitted her certificate of naturalization and the beneficiary's birth certificate.

On May 31, 2012, the director issued a request for evidence (RFE) to the petitioner, requesting her to provide additional evidence demonstrating compliance with the meeting requirement or evidence that compliance would cause her extreme hardship, or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. The director also requested that the petitioner submit evidence that the petitioner was divorced from her prior husband. In response to the RFE, the petitioner submitted two photographs of herself together with the beneficiary and a copy of divorce decree for a [REDACTED]. The photographs were undated but one was labeled by the petitioner as having been taken in 2010 during a birthday party for her son and the other as having been taken on June 7, 2012 outside of the beneficiary's home.

On July 16, 2012, the director denied the petition, concluding that the petitioner did not establish that she 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 her. The director further determined that the petitioner had failed to submit documentary evidence that she was legally free to marry the beneficiary at the time the petition was filed.

Analysis

On appeal, counsel asserts that the petitioner was free to enter into a relationship and marry the beneficiary at the time the petition was filed. He submits a corrected divorce certificate showing that the petitioner's prior marriage was dissolved on August 9, 2010. Accordingly, the record establishes by a preponderance of the evidence that the petitioner was and continues to be free to marry the beneficiary and the director's contrary determination is hereby withdrawn.

Counsel also asserts on appeal that the petitioner is unable to provide documentary evidence that she met the beneficiary during the requisite two-year period because she drove to Mexico to visit the beneficiary and therefore did not have evidence that she travelled there. Additional evidence is not submitted on appeal.

Upon a full review of the record, including counsel's statement on appeal, we find no error in the director's decision to deny the petition for failure to satisfy the in-person meeting requirement. The petitioner failed to provide evidence that she visited the beneficiary during the requisite two-year period

between January 3, 2010 and January 3, 2012. The two photographs submitted below are undated but labeled by the petitioner as taken sometime in 2010 and on June 7, 2012. No corroborating evidence is submitted to verify the claimed dates of the photographs, one of which falls outside of the two-year period. The remaining photograph is insufficient to establish that the petitioner and the beneficiary met during the requisite period. Furthermore, the petitioner is not claiming, nor does the record reflect, that she 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 petitioner has established the legal termination of her prior marriage and demonstrated that she was free to marry the beneficiary at the time of filing the Form I-129F. However, the petitioner failed to establish that she met the beneficiary in person during the two years preceding the filing of this petition or that she is eligible for a discretionary waiver of that 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.