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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
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Services

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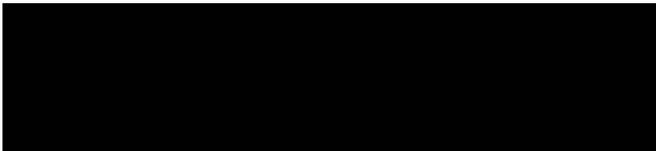
Office: CALIFORNIA SERVICE CENTER

Date: **SEP 14 2009**

IN RE: Petitioner: [Redacted]
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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Libya, 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 establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition.

On appeal, counsel submits a brief and additional evidence.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" 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 (other than a citizen described in section 204(a)(1)(A)(viii)(I)) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry. . . .

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 two 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 his discretion may waive the requirement that the parties have previously met in person.

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's 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.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services on December 27, 2006. Therefore, the petitioner and beneficiary were required to have met in person sometime between December 27, 2004 and December 27, 2006. In response to question #18, which asks whether the petitioner and the beneficiary had met within the two-year period immediately preceding the filing of the petition, the petitioner responded “yes, and stated: “we met in Egypt on August 2006 when I was visiting my family, later my family helped make arrangements for our engagement.”

In a June 21, 2008 Request for Evidence (RFE), the director requested, among other items, evidence to establish that the petitioner and beneficiary met in person within the required timeframe or, in the alternative, evidence to establish why the requirement of an in-person meeting should be waived. In response, the petitioner submitted a copy of his expired U.S. passport, which he stated he used when traveling to Tunis to see his fiancée in February and March 2007. The passport contained entry and exit stamps from Tunisian authorities. The petitioner also submitted a copy of the beneficiary’s passport with the same Tunisian stamps as well as receipts of his airline tickets and photographs of the petitioner, the beneficiary, and several family members together.

In denying the petition, the director acknowledged the evidence that the petitioner had submitted to show he had met the beneficiary, but noted that this evidence showed that an in-person meeting took place after the petition was filed, not during the requisite period, which was from December 27, 2004 through December 27, 2006. The director also stated that the petitioner failed to provide any evidence to show why the requirement of an in-person meeting should be waived.

On appeal, counsel submits a brief and additional evidence. Counsel states that the in-person meeting requirement should be waived because the beneficiary’s social and religious practices would not permit her to meet the petitioner until after an engagement ceremony took place. In support of her assertions, counsel submits an affidavit from a Muslim clergy, several internet article on Islamic weddings, and information from a “google” search on the term “Walimah.” Counsel asserts in her brief that the petitioner and beneficiary did not meet in August 2006 in Egypt as stated on the Form I-129F.

The evidence submitted in support of the petition is insufficient to overturn the director’s decision. Initially, the petitioner claimed on the Form I-129F that he had met the beneficiary in August 2006. When requested by the director to submit either evidence of an in-person meeting during the required time period or evidence to establish why such a requirement should be waived, the petitioner did not submit any evidence relating to either of those two issues. Instead, the petitioner submitted evidence to show that he and the beneficiary had met after the petition was filed. For the first time on appeal, counsel asks USCIS to waive the in-person meeting requirement because of the beneficiary’s and the petitioner’s cultural and religious practices.

The AAO will not consider counsel’s evidence, submitted for the first time on appeal, for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). A review of the record establishes that the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it before the visa petition was adjudicated. The petitioner failed to ask for a waiver of the in-person meeting requirement, despite the director’s

notice to the petitioner that such a waiver could be requested. Accordingly, the appeal will be adjudicated based on the record of proceeding before the director.

The petitioner stated on the Form I-129F that he met the beneficiary in Egypt in August 2006; however, he does not submit any evidence to support his statement.¹ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Additionally, the petitioner has not asked for a waiver of the meeting requirement as allowed under section 214(d)(1) of the Act.

The evidence in the record establishes that the in-person meeting between the petitioner and the beneficiary did not occur prior to the filing of the petition. Since the law requires an in-person meeting between the petitioner and the beneficiary within the two-year period that precedes the filing of the petition, and as the petitioner and the beneficiary have not met this requirement, the director's decision to deny the petition will not be disturbed. 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.

¹ Although counsel states in her brief that "it was misstated that [the petitioner] and his fiancé . . . met in Egypt in August 2006," counsel fails to clarify why such a misstatement occurred. The AAO notes that the petitioner signed the Form I-129F under penalty of perjury and there is no indication on the form that a person helped the petitioner to prepare it.