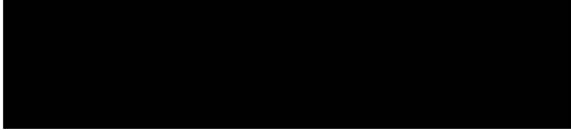


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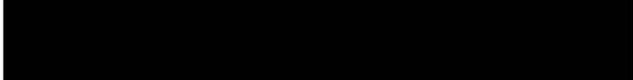
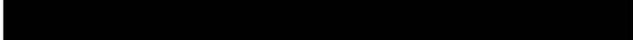
U.S. Citizenship  
and Immigration  
Services

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prevent clearly unwarranted  
invasion of personal privacy



D6

FILE:  Office: CALIFORNIA SERVICE CENTER Date: **FEB 05 2009**

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)

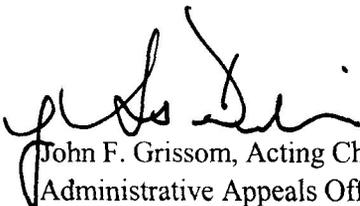
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 nonimmigrant visa petition was denied by the Director, California Service Center, and 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 Mexico, 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 a properly completed Form G-325A, Biographic Information, for the beneficiary, and evidence that the petitioner and the beneficiary met in person within the two-year period immediately before filing the petition.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who 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 entry. . . .

Section 214(d) of the Act, 8 U.S.C. § 1184(d), 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 . . . .

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 regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on January 17, 2008. Therefore, the petitioner and beneficiary were required to have met in person between January 17, 2006 and January 17, 2008. On the Form I-129F, the petitioner indicated that he and the beneficiary had met and seen one another within the required two-year period prior to filing the petition, and that he and the beneficiary initially met about 24 to 25 years ago as friends.

In response to the director's May 30, 2008 Request for Evidence (RFE), the petitioner stated in his June 22, 2008 letter that, although he is unable to submit proof of an airline ticket, he has a suitcase claim stub with his name and the date of his flight to Mexico, and that his passport does not contain a return stamp of his reentry into the United States. As supporting documentation, the petitioner submitted the following: passport photos and G-325A forms for himself and the beneficiary, copies of the photo page and two blank pages of his U.S. passport; a luggage tag with his name from an AeroMexico flight on April 7, 2004; and undated photos of himself and the beneficiary.

As stated above, the director denied the petition because the petitioner failed to submit a properly completed Form G-325A for the beneficiary, and evidence that the petitioner and the beneficiary met in person within the two-year period immediately prior to filing the petition.

On appeal, counsel submits G-325A forms for both the petitioner and the beneficiary. Counsel states that the petitioner has travelled many times to see the beneficiary, as he can drive to visit her any time and at will, and that the petitioner testified to the immigration officer that he in fact did travel back and forth many times in the past two years by car to see the beneficiary. Counsel cites to unpublished decisions in support of his request that the appeal be sustained.

The law clearly states that the petitioner and beneficiary must have met in person within the two years before the filing of the petition. The suitcase claim stub submitted by the petitioner is dated April 7, 2004, which is prior to the requisite two-year meeting period, and the photographs of the petitioner and the beneficiary are undated. Based upon the evidence in the record, the AAO is unable to determine when the requisite meeting took place. Counsel notes that CIS approved/sustained other I-129F petitions that had been previously filed under similar circumstances. The record of proceeding does not contain copies of the visa petitions that counsel claims were previously approved/sustained. It must be emphasized that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner, therefore, has not established compliance with Section 214(d) of the Act because he has failed to establish that he and the beneficiary met between the January 17, 2006 and January 17, 2008 timeframe. For these reasons, the petition must be denied.

Beyond the decision of the director, the record does not contain evidence that the petitioner's prior marriage was legally terminated, or statements or other evidence that establish the intent of the petitioner and the beneficiary to marry within 90 days of the beneficiary's arrival to the United States. For these additional reasons, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, he should consult the instructions to the Form I-129F to understand the specific documents that he should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at [www.uscis.gov](http://www.uscis.gov), or call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his home.

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.