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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
and Immigration
Services**

D6

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **DEC 27 2010**

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)

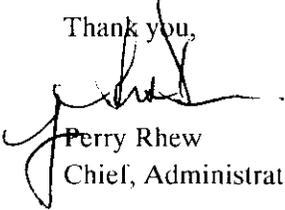
ON BEHALF OF PETITIONER:

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the petition remanded to the director to treat as a motion.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on August 26, 2010. It is noted that the director properly gave notice to the petitioner that he had 33 days to file the appeal. The appeal was received by U.S. Citizenship and Immigration Services (USCIS) with the proper fee on October 6, 2010, or 41 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(I) states that an appeal which is not filed within the time allowed must be rejected as improperly filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

An untimely filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy.

Upon review, the petitioner submitted sufficient new evidence to meet the requirements for a motion to reopen. The director denied the petition because the petitioner did not establish that he had a bonafide intention to marry and that the claimed relationship existed solely to circumvent U.S. immigration laws. On appeal, the petitioner submits additional evidence, including: a statement from a former outreach worker; a statement from the petitioner's sister, with translation; a statement from the beneficiary's grandmother, with translation; and photos. Upon review, the petitioner submitted new evidence to address the director's objections. Accordingly, the petitioner's untimely filed appeal meets the requirements for a motion to reopen.

Beyond the decision of the director, it is noted that section 214(d) of the Act states that USCIS *shall* approve the Form I-129F, Petition for Alien Fiancé(e), when a petitioner submits evidence to establish that he/she and the beneficiary have met within the two-year period immediately preceding the filing of the petition, have a bonafide intention to marry, and are legally able and willing to marry within 90 days of the beneficiary's arrival in the United States. In her July 19, 2010 Notice of Intent to Deny, the director indicates that the petitioner and the beneficiary had a short courtship and that their communication and ongoing marital relationship was limited. Thus, it appears that the director imposed an additional requirement on the petitioner – establishing an ongoing marital relationship with the beneficiary. However, no such requirement exists for the approval of a Form I-129F, and the AAO

finds the director to have erred in imposing it. While section 214(d) of the Act stipulates that the petitioner must establish that he and the beneficiary have a bonafide intention to marry, this language is not synonymous with a requirement that the petitioner establish an ongoing marital relationship with the beneficiary. Specifically, section 214(d) of the Act does not require that USCIS evaluate the bona fides of the fiancé(e) relationship before approving the petitioner's Form I-129F.

In view of the foregoing, the case will be remanded to the California Service Center to be considered as a motion to reopen. The director shall review all the evidence of record, including the evidence submitted on appeal in which the petitioner addresses the issues singled out by the director in the denial notice.

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 sustained that burden.

ORDER: The appeal is rejected. The petition is remanded to the director for further consideration and entry of a new decision.