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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

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DG



FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 05 2010**

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:

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner is a naturalized U.S. citizen who seeks to classify the beneficiary, a native and citizen of Mauritania, as the fiancé(e) of a U.S. citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

Section 101(a)(15)(K)(i) 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 admission

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

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.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. In this case, the director initially denied the

petition on October 8, 2008, finding that the petitioner failed to submit any initial evidence or supporting documentation. The petitioner subsequently appealed the director's decision, and on March 16, 2009, the AAO remanded the matter to the director for further action. Upon remand, the director issued a Request for Evidence (RFE) on May 28, 2009, which informed the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish eligibility under § 101(a)(15)(K) of the Act. The petitioner timely responded to the RFE and the director denied the petition on September 9, 2009, finding that the petitioner's additional evidence, which included the petitioner's personal statement, a copy of his naturalization certificate, his medical records, and G-325A, Biographic Information, forms for himself and the beneficiary, failed to overcome the grounds for denial, as the petitioner did not submit the requested passport-style photograph for himself and an explanation of his marriage decree. The director certified his decision to the AAO for review and notified the petitioner that he could submit a brief or other written statement to the AAO within 30 days of service of the director's decision. To date, no further submission has been received. Accordingly, the record is considered to be complete as it now stands.

Upon review, we concur with the director's determination. As discussed above, the petitioner did not submit all of the required supporting documentation, as described on pages 2 and 3 of the instructions to the I-129F petition.

It is also noted that, as stated by the director in his September 9, 2009 decision, the petitioner and the beneficiary appear to have been legally married prior to the filing of the instant petition, as the translation of their marriage certificate reflects that their marriage was duly recorded on September 27, 2006 with a civil authority of the Republic of Senegal. The Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) has amended the language of section 101(a)(15)(K) of the Act to allow an individual to benefit from a Form I-129F fiancé(e) petition if he or she:

(ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa....

8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(k)(ii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F....

In this case, there is no evidence in the record that a Form I-130 visa petition was filed by the petitioner on behalf of his wife prior to his submission of the Form I-129F, nor has a check of U.S. Citizenship and Immigration Services (USCIS) databases indicated that this is the case. As a result, the beneficiary cannot benefit from the instant petition. Therefore, the appeal is dismissed.

The denial of this petition is without prejudice. Once the petitioner files a Form I-130 for his wife, he may file a new I-129F petition on her behalf in accordance with the statutory requirements.

The petition will be denied for the reasons stated above, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the September 9, 2009 decision of the director is affirmed and the petition is denied.

ORDER: The director's decision of September 9, 2009 is affirmed. The petition is denied.