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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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Date: **APR 12 2011** 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Saudi Arabia, 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 nonimmigrant visa petition because the record did not establish that the petitioner had a bona fide relationship with the beneficiary and that the petitioner had complied with the requirements under the International Marriage Broker Regulation (IMBRA), codified at section 214(d)(2) of the Act. On appeal, counsel submits a brief and additional evidence.

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:

[s]hall 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

On January 5, 2006, the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006), 8 U.S.C. § 1375a. Title VII of VAWA 2005 is entitled "Protection of Battered and Trafficked Immigrants," and contains Subtitle D, "International Marriage Broker Regulation" (IMBRA), codified at section 214(d)(2) of the Act, which states, in pertinent part:

(A) Subject to subparagraphs (B) and (C), a consular officer may not approve a petition under paragraph (1) unless the officer has verified that--

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. . . .

In sum, if a petitioner has filed two or more K-1 visa petitions at any time in the past, or previously had a K-1 visa petition approved within two years prior to the filing of the current petition, the petitioner must request a waiver.

On September 8, 2010, the director issued a Notice of Intent to Deny (NOID), advising the petitioner that U.S. Citizenship and Immigration Services (USCIS) records showed that she had another fiancé petition approved on behalf of the beneficiary within two years of the July 2, 2010 filing date of the instant petition. Specifically, I-129F petition, WAC-08-187-51423, was initially approved on January 13, 2009, on behalf of the beneficiary. On May 25, 2009, the approved petition was forwarded to the National Visa Center in Portsmouth, New Hampshire, by the U.S. Embassy in Riyadh, Saudi Arabia, with a conclusion by the consular officer that the claimed relationship did not meet the criteria for the fiancé(e) visa as described in section 214(d) of the Act, as the beneficiary lacked information regarding the petitioner's life, and his true relationship was with the petitioner's male neighbor. The consular officer thus recommended a review and revocation of the petition. On August 17, 2009, the director terminated all action on the petition pursuant to 8 C.F.R. § 214.2(k)(5), as the period of validity of the petition had expired and the petition would not be revalidated. The September 8, 2010 NOID notified the petitioner that she was subject to the IMBRA bar against multiple filings, that she would have to submit additional documentation to request a waiver of the filing limitations, and that she had failed to demonstrate a bona fide relationship with the beneficiary. In his October 6, 2010 response, counsel submitted a brief and additional evidence. Counsel stated, in part, that the petitioner was not subject to the numerical limitations of the IMBRA because she had filed two I-129 petitions for the same beneficiary, and that, if it was determined that the petitioner was subject to the requirements of IMBRA, she was entitled to a waiver because she had no criminal history, she had filed for only one beneficiary, and her relationship with the beneficiary was bona fide. Counsel also cited to a prior AAO decision to show that the petitioner and the beneficiary were not required to establish that their relationship was bonafide, only that that they had a bona fide intention to marry. As supporting documentation, counsel submitted a signed, dated declaration from the petitioner explaining why she should be granted a waiver of the requirements of IMBRA. Specifically, the petitioner stated that: she had filed two I-129 petitions for the same beneficiary; she had no history of violent criminal offenses; she had never been arrested or charged with committing a crime; she had never been a victim of battery or extreme cruelty; she loved the beneficiary and wanted to marry him; and the mutual relationship between herself and the beneficiary was bona fide. Counsel also submitted statements from the beneficiary and a friend of both the petitioner and the beneficiary, Willis E. Peacock, Jr.

The director denied the nonimmigrant visa petition because the petitioner had submitted insufficient evidence to establish the fiancé(e) relationship pursuant to the requirements under the IMBRA and section 101(a)(15)(K) of the Act. On appeal, counsel states that the petitioner is not required under the Act to establish a bona fide relationship with the beneficiary. Counsel also asserts that the petitioner is not subject to the requirements of the IMBRA and that, in the event that the petitioner is subject to the requirements of IMBRA, she is entitled to a waiver because she has no criminal history, she has filed for only one beneficiary, and she and the beneficiary have a bona fide intention to marry as well as a bona fide relationship. As supporting documentation, counsel submits the referenced brief, a copy of a sustained decision from the AAO, and statements from Lisa Espinosa and Samuel Lee Anderson II.

At the outset, the AAO notes counsel's erroneous conclusion that the petitioner is not subject to the filing limitations imposed by IMBRA. The term "such a petition" at section 214(d)(2)(A)(ii) of the Act refers to an I-129F petition filed under section 214(d)(1) of the Act. Therefore, because the petitioner had an I-129F petition approved for the beneficiary on January 13, 2009 and filed the instant Form I-129F petition on July 2, 2010, the petitioner is subject to the filing limitation imposed by IMBRA.

Section 214(d)(1) of the Act states that USCIS *shall* approve the Form I-129F when a petitioner submits evidence to establish that he/she and the beneficiary have met within the two-year period preceding the filing of the Form I-129F, 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. While the Department of State's interview of the beneficiary raised the possibility that the relationship between the petitioner and the beneficiary was not bona fide because the beneficiary lacked knowledge of the petitioner's life, and the beneficiary's true relationship was with the petitioner's male neighbor, the requirement to establish a bona fide relationship does not exist for the approval of a Form I-129F and the AAO finds the director to have erred in imposing it. While section 214(d)(1) of the Act stipulates that the petitioner must establish that she and the beneficiary have a bonafide intention to marry, this language is not synonymous with a requirement that the petitioner establish the bona fides of their relationship.

In reaching its decision, the AAO notes the concerns expressed by the consular officer and, subsequently, the director regarding the beneficiary's lack of knowledge concerning the petitioner and the bona fides of their relationship. However, as just noted, section 214(d) of the Act does not require the beneficiary to be knowledgeable regarding the petitioner or the details of her life, such as her occupation and where her children live, nor that USCIS evaluate the beneficiary's relationship with the petitioner's male neighbor, before approving the petitioner's Form I-129F. Instead, it allows for the approval of the Form I-129F when the petitioner and beneficiary have met no more than once during the two-year period preceding the date of filing. Accordingly, the reservations expressed by the consular officer and the director are not probative for the purposes of these proceedings.

The director's denial of the instant petition is based solely on the petitioner's failure to submit sufficient evidence to establish a bona fide relationship with the beneficiary. As the director erred in imposing such a requirement on the petitioner, the director's denial of the petition on the basis of the petitioner's failure to establish the bona fides of her relationship with the beneficiary was in error and is hereby withdrawn. The petition may not be approved, however, because the record still does not contain an original statement from the beneficiary or other evidence that establishes his intent to marry the petitioner within 90 days of his entry into the United States in K-1 status.¹ In addition, the record contains insufficient evidence that the petitioner and the beneficiary personally met within the two-year period immediately preceding the filing of the petition or that the petitioner qualified for a waiver of that requirement. It is noted that the petitioner filed the instant Petition for Alien Fiancé(e) (Form I-129F) with USCIS on July 2, 2010. Therefore, the petitioner and the beneficiary were required to have met in person between July 2, 2008 and July 2, 2010. While the petitioner submitted photocopies of photographs of herself with the beneficiary indicating that she met this requirement, the dates on the photocopied photographs are not corroborated by copies of the beneficiary's passport pages containing

¹ The instructions to the I-129F petition at pages 2 and 3, items #5 and #6, state that the above described documentation must be submitted for both the petitioner and the beneficiary.

the related entry and exit stamps. Accordingly, the AAO shall remand the matter to the director so that she can provide the petitioner with an opportunity to submit all of the required documentation. The director may request any additional information or evidence that she deems necessary. Upon receipt of all of the required documentation, the director must enter a new decision, determining whether the petitioner has met the requirements under the IMBRA and section 101(a)(15)(K) of the Act. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.