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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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[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

JAN 07 2011

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:

[REDACTED]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 Colombia, 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 evidence to support his claim that he merited a favorable exercise of discretion regarding his request for a waiver of the limitations against filing a fiancée petition within two years of filing a previously approved fiancée petition, pursuant to section 214(d)(2)(B) of the Act. On appeal, the petitioner submits a statement why his request for a waiver should be approved.

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 June 21, 2010, the director issued a request for evidence (RFE), advising the petitioner that U.S. Citizenship and Immigration Services (USCIS) records showed that he had another fiancée petition approved within two years of the April 8, 2010 filing date of the instant petition. Specifically, [REDACTED] was approved on January 8, 2010, for [REDACTED]. The RFE notified the petitioner that he was subject to the IMBRA bar against multiple filings and would have to submit additional documentation to request a waiver of the filing limitations. In his response, the petitioner submitted a notarized statement, dated July 3, 2010, stating, in part, that he met [REDACTED] on the Internet in September 2009, that he visited her and became engaged to her in October 2009, that he terminated their engagement in December 2009, and that, shortly thereafter, he requested that the visa petition filed on her behalf be withdrawn, the confirmation of which he received on February 16, 2010.

The director denied the nonimmigrant visa petition because the record did not establish that the petitioner had complied with the requirements under the IMBRA. Specifically, the director determined that the petitioner did not merit a favorable exercise of discretion because he submitted no evidence to support his assertions that he had requested that the visa petition filed on behalf of [REDACTED] be withdrawn and that he received confirmation of the visa's cancellation. On appeal, the petitioner requests a waiver and submits additional documentation, including copies of the following: an email message sent on January 22, 2010, from the petitioner to the Written Inquiry Unit of the National Visa Center (NVC Inquiry), requesting the cancellation of the visa petition for [REDACTED]; an email message sent on February 3, 2010, from the petitioner to the visa unit at the U.S. Embassy in Bogota, Colombia, requesting the cancellation of the same visa petition; email messages sent on February 5 and 19, 2010, from the NVC Inquiry to the petitioner, instructing him that, as the visa processing had already been completed and the visa petition forwarded to the U.S. Embassy/Consulate General for processing, he should submit a signed written statement to the assigned U.S. Embassy/Consulate General requesting withdrawal of the petition; an email message sent on February 25, 2010, from the petitioner to the Immigrant Visa Section in Bogota, Colombia, requesting the status of his request for visa cancellation; and an email message sent on February 25, 2010, on behalf of the Immigrant Visa Section in Bogota, Colombia, to the petitioner, notifying him that on February 16, 2010, the visa petition filed on behalf of [REDACTED] was returned to the NVC for cancellation.

The record reflects that the I-129F petition filed by the petitioner on behalf of [REDACTED] on October 19, 2009, was approved on January 8, 2010. The petitioner explains in his July 3, 2010 notarized statement submitted in response to the RFE that "[a]s [his and [REDACTED]] relationship progressed, [he] began to realize that her interest in [him] was more monetary than sentimental." As supporting documentation, the petitioner submits a copy of an email message sent to him from [REDACTED] on March 20, 2010, requesting \$500, to show that three months after he terminated his relationship with her, she continued to request money from him. The record also reflects that, beginning on January 22, 2010, the petitioner contacted the NVC Inquiry and the Immigrant Visa Section in Bogota, Colombia, various times by email to inform them that he and [REDACTED]

were no longer engaged, and to request the cancellation of the visa petition filed on her behalf. Pursuant to the petitioner's request, the visa petition filed on behalf of [REDACTED] was returned from the Immigrant Visa Section in Bogota, Colombia to the NVC for cancellation on February 16, 2010. Upon review of the evidence in its entirety, the petitioner has demonstrated that, beginning on January 22, 2010, he emailed the NVC Inquiry and the Immigrant Visa Section in Bogota, Colombia, various times to request the cancellation of the visa petition filed on behalf of [REDACTED]. The petitioner, however, has failed to demonstrate that he merits a favorable exercise of discretion to waive the filing limitations imposed by IMBRA because the record still contains the following unexplained inconsistency: In the "Affidavit of Intent to Marry of Alien Fiancé," signed by the beneficiary on March 11, 2010, the beneficiary stated that she was aware that the petitioner "HAS been convicted by court of law (civil or criminal) for any of the following crimes: Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking." This is inconsistent with counsel's claim that the petitioner does not have a criminal background and the petitioner's claim in his "Waiver Affidavit" submitted on appeal that he has "no criminal history with regard to the 'specified crimes' under IMBRA." The record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Upon review of the evidence in its entirety, the petitioner has failed to demonstrate that he merits a favorable exercise of discretion to waive the filing limitations imposed by IMBRA. Thus, the petitioner's request for a waiver is denied.

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, or he may 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.