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

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

JAN 13 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:

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.

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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Nigeria, 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).

At the outset, it is noted that another nonimmigrant visa petition filed by the petitioner on behalf of the beneficiary was denied on May 9, 2009, due to abandonment.

The director denied the instant nonimmigrant visa petition because the record contains no 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. On appeal, the petitioner submits a statement 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

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 March 30, 2010. Therefore, the petitioner and the beneficiary were required to have met in person between March 30, 2008 and March 30, 2010.

When he filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner indicated that he had traveled to Nigeria in December 2005, July 2006, and August 2007, and that he met the beneficiary on all of his trips.

On July 28, 2010, the director issued a request for evidence (RFE), requesting that the petitioner submit evidence that he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition.

In his April 9, 2010 response to the director's RFE, the petitioner stated, in part, that he had not met the beneficiary in the required time period due to extenuating financial circumstances. The petitioner explained that had lost his job in 2008, and thus was unable to travel due to financial hardship. The petitioner submitted additional documentation, including: documentation related to his job loss in 2008; his tax returns and paystubs; and photocopies of his passport.

The director denied the petition because the petitioner failed to establish that he and the beneficiary had met, as required under section 214(d)(1) of the Act, or that he qualified for an exemption from this meeting requirement, pursuant to 8 C.F.R. § 214.2(k)(2).

On appeal, the petitioner states, in part, that he met the in-person meeting requirement for the previous petition that he filed on behalf of the beneficiary. The petitioner also states that he also has submitted documentation to show that his financial circumstances prevented him from visiting the beneficiary. The petitioner states further that neither he nor the beneficiary could afford to travel during the required time period, and that the beneficiary was denied a visa because "she did not make enough money. . . ." As supporting documentation, the petitioner submits: an appointment confirmation for the beneficiary on February 29, 2008, at the U.S. Consulate General in Lagos, Nigeria; a copy of the beneficiary's DS-156, Nonimmigrant Visa Application; a copy of Form I-134, Affidavit of Support, executed by the petitioner on behalf of the beneficiary, signed on February 19, 2008; a letter from the petitioner to the beneficiary, dated February 18, 2008; and pay stubs for the beneficiary.

As discussed above, the petitioner and the beneficiary were required to have met in person between March 30, 2008 and March 30, 2010. The AAO acknowledges the petitioner's statement that he met the in-person meeting requirement on the previous petition that he filed on behalf of the beneficiary. USCIS regulations, however, affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). 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, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In this case, the petition was filed on March 30, 2010, and thus the petitioner and the beneficiary were required to have met in person between March 30, 2008 and March 30, 2010. The AAO also acknowledges the financial circumstances of the petitioner and the beneficiary and the petitioner's claim that the beneficiary's visa application was denied at the U.S. Embassy in Lagos because she did not make enough money. The record contains no evidence that the beneficiary's visa application was denied. In addition, the financial commitment required for travel to a foreign country is a common requirement to those filing the Form I-129F petition and does not constitute extreme hardship. The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner. Accordingly, the appeal is dismissed. The petition must be denied.

Beyond the decision of the director, the record does not contain original statements from the petitioner and the beneficiary or other evidence that establishes their mutual intent to marry within 90 days of the beneficiary's entry into the United States in K-1 status. For this additional reason, the petition may not be approved. Accordingly, the appeal is dismissed.

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.