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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

**PUBLIC COPY**

86

[Redacted]

Date:

MAY 02 2011

Office:

[Redacted]

[Redacted]

IN RE:

Petitioner:

[Redacted]

Beneficiary:

PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)(i)

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 service center director denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen. The motion will be granted. The previous decision of the AAO, dated December 6, 2010, will be affirmed and the petition will remain denied.

Section 214(d)(2)(A) of the Act prohibits the approval of a fiancé(e) petition where the petitioner has previously petitioned for two or more alien fiancé(e)s; or had a prior fiancé(e) petition approved that was filed less than two years ago. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, waive these limitations if justification exists for such a waiver. Section 214(d)(2)(B) of the Act, 8 U.S.C. § 1184(d)(2)(B). The burdens of proof and persuasion lie solely with the petitioner.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated December 6, 2010, only certain facts will be repeated as necessary here. The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, as the fiancée of a United States citizen pursuant to § 101(a)(15)(K)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(i). The record shows that the petitioner has previously filed fiancée petitions for three other women, all of which were initially approved. The petitioner is consequently subject to the multiple filing bar at section 214(d)(2)(A)(i) of the Act. 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 filing limitation pursuant to section 214(d)(2)(B) of the Act, 8 U.S.C. § 1184(d)(2)(B). On appeal, the petitioner requested a waiver and submitted a copy of his July 5, 2010 letter that he submitted in response to the director's June 16, 2010 request for evidence. The petitioner stated that he previously filed three Form I-129F fiancée petitions for the following women: [REDACTED] and [REDACTED]

[REDACTED] The petitioner also indicated that: his 1999 marriage to [REDACTED] ended in divorce in 2002; when he decided not to marry [REDACTED] he sent a letter to USCIS in 2005 to cancel the petition; and after he decided not to marry [REDACTED] she departed the United States and returned to China on August 22, 2007. The record contains a divorce decree indicating that the petitioner and [REDACTED] were divorced on December 11, 2003, and that the petition for [REDACTED] was returned by the Department of State for review in 2008, and terminated in 2009.

The AAO dismissed the appeal because the petitioner did not demonstrate that he merited a favorable exercise of discretion to grant him a waiver of the multiple filing restriction and the record showed that he had a pattern of filing and obtaining approvals of fiancée petitions every few years. The AAO also noted, beyond the decision of the director, that the record did not contain: original statements from the petitioner and the beneficiary or other evidence that sufficiently establishes their mutual intent to marry within 90 days of the beneficiary's entry into the United States in K-1 status<sup>1</sup>; a passport-style, color photograph for the beneficiary (the previously submitted photograph is too large); and evidence that the petitioner and the beneficiary met within the two-year period immediately preceding the filing of the petition.

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<sup>1</sup> 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.

On motion, the petitioner states, in part, that he disagrees with the AAO's determination that he has a pattern of filing petitions. Nevertheless, the petitioner has previously filed three fiancée petitions for three different women and is subject to the multiple filing bar at section 214(d)(2)(A)(i) of the Act. The instant petition can only be approved if the petitioner establishes that he merits a favorable exercise of discretion to grant a waiver of the multiple filing bar. The petitioner has failed to make this showing on motion. While the petitioner has explained why his relationships with all three of his prior fiancées ended, he has failed to show that he merits a waiver of the multiple filing bar because of unusual or exceptional circumstances, such as, for example, the death or incapacity of his prior fiancées. In view of the record in its entirety, the petitioner has failed to demonstrate that he merits a favorable exercise of discretion and justification does not exist to grant the petitioner a waiver.

In regards to the additional grounds of ineligibility noted in the AAO's prior decision, the petitioner provides additional documentation on motion, including numerous photographs of himself with the beneficiary. These photographs along with the entry and exit stamps in his U.S. passport establish that he and the beneficiary met within the two-year period immediately preceding the filing of the petition. Therefore the petitioner has overcome this portion of the AAO's prior decision. The petitioner also submitted copies of electronic mail messages between himself and the beneficiary. These messages contain informal expressions of their mutual affection and desire to marry each other, but are insufficient to demonstrate that the petitioner and the beneficiary seek her entry into the United States solely to conclude a valid marriage to each other within 90 days of her admission, as required by section 101(a)(15)(K)(i) of the Act.<sup>2</sup>

In sum, the petitioner has not established that he and the beneficiary seek her entry into the United States solely to conclude a valid marriage to each other within 90 days of the beneficiary's entry into the United States. The petitioner also has not demonstrated that he merits a favorable exercise of discretion to waive the filing restriction at section 214(d)(A)(i) of the Act..

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 previous decision of the AAO, dated December 6, 2010, will be affirmed and the petition will remain denied.

**ORDER:** The decision of the AAO, dated December 6, 2010, is affirmed. The petition remains denied.

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<sup>2</sup> The AAO also acknowledges the petitioner's comments concerning the difficulty he experienced in attempting to obtain a passport photo of the correct size for the beneficiary. The record as it is presently constituted, however, still does not contain an acceptable passport photograph for the beneficiary.