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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

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services



D6

Date: **MAY 10 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:

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 Guinea, 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 a 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 and a letter from his friend.

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 January 10, 2011, 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 on behalf of the beneficiary within two years of the June 23, 2010 filing date of the instant petition. Specifically, I-129F petition, [REDACTED] was initially approved on August 21, 2009 on behalf of the beneficiary. On November 12, 2009, the approved petition was forwarded to the National Visa Center in Portsmouth, New Hampshire, by the U.S. Embassy in Dakar, Senegal, with a conclusion by the Consul that the petitioner and the beneficiary had not met each other during the two-year period immediately preceding the filing of the petition. On February 18, 2010, 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 January 10, 2011 RFE notified the petitioner that he was subject to the IMBRA bar against multiple filings, that he would have to submit additional documentation to request a waiver of the filing limitations, and that he had failed to submit a passport photo and a Form G-325A, Biographic Information, for himself. In his response, the petitioner submitted a passport photo and a Form G-325A, Biographic Information, for himself.

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 failed to request a waiver of the filing limitations and an explanation as to why he should be granted the waiver. On appeal, the petitioner states that he is not certain that filing for a waiver is necessary because he cancelled the first I-129F petition that he filed on behalf of the beneficiary. The petitioner also stated that if he needed to file any other form for a waiver, he would do so. As supporting documentation, the petitioner submits a letter from his friend.

The AAO acknowledges the petitioner's uncertainty on appeal as to whether he must file for a waiver. In this matter, because the petitioner had an I-129F petition approved for the beneficiary on August 21, 2009, and filed the instant Form I-129F petition on June 23, 2010, he is subject to the filing limitation imposed by IMBRA and must, therefore, request a waiver of the filing limitations. The record, however, still does not contain a request for a waiver. As instructed by the director in his RFE, the petitioner must submit a signed and dated request for a waiver, explaining why a waiver would be appropriate in his case, together with any evidence in support of the request. In view of the foregoing, as the petitioner still has not complied with requirements under the IMBRA, he has not overcome the objection of the director. Thus, the appeal will be dismissed and the petition will be denied.

Beyond the decision of the director, the petitioner's Form G-325A, Biographic Information, which he submitted in response to the director's RFE contains an unexplained inconsistency. Specifically, on the G-325A form, signed by the petitioner on January 19, 2011, the petitioner indicated that he had no former spouses, which conflicts with the information that he previously submitted and the information

reflected on his Certificate of Naturalization, which establishes that he is divorced. The record contains no explanation for this inconsistency.<sup>1</sup>

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.

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<sup>1</sup>An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).