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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: NOV 03 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:

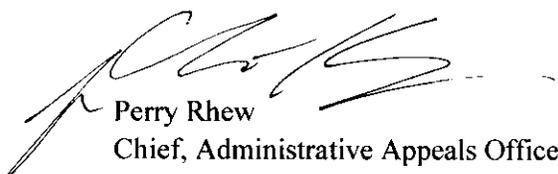
SELF-REPRESENTED

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Pakistan, 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 petitioner failed to: (1) submit a Form G-325A, Biographic Information, for herself and the beneficiary; (2) establish that she would be able to conclude a valid marriage in the United States with the beneficiary; and (3) establish that she and the beneficiary met in person within the two years immediately preceding the filing of the petition or her eligibility for an exemption from this requirement.

On appeal, the petitioner submits a brief one-paragraph statement and a Form G-325A for herself and the beneficiary.

Applicable Law

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:

shall 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, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a Petition for Alien Fiancé(e) (Form I-129F), including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

Factual and Procedural History

The petitioner filed the fiancé(e) petition with U.S. Citizenship and Immigration Services on November 16, 2010. She included a copy of her passport containing an exit stamp for her departure from ██████████ on August 7, 2010 and original photographs of herself and her fiancé during their engagement. On April 11, 2011, the director issued a request for evidence (RFE) of the petitioner's ability to conclude a valid marriage in the United States with the beneficiary, a Form G-325A, Biographic Information, for the petitioner and the beneficiary, passport photographs of the petitioner and beneficiary, original statements from the petitioner and the beneficiary to establish their mutual intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status, and completion of Part C of the Form I-129F. In response to the RFE, the petitioner submitted the third page of the Form I-129F with Part C completed.

The director determined that the additional evidence failed to establish eligibility for the approval of the nonimmigrant visa petition because the petitioner failed to: (1) submit a Form G-325A, Biographic Information, for herself and the beneficiary; (2) establish that she would be able to conclude a valid marriage in the United States with the beneficiary who is her first cousin and was under the age of 18 at the time this petition was filed; and (3) establish that she and the beneficiary met in person within the two years immediately preceding the filing of the petition or her eligibility for an exemption from this requirement.

On appeal, the petitioner provides a brief statement in which she asserts that the beneficiary, who is her cousin, is over 18 years old and their marriage has been arranged. The petitioner contends that she and the beneficiary will wed in New York since there is a law in her state of residence, Michigan, prohibiting the marriage of first cousins. She also provides a Form G-325A for herself and the beneficiary.

Analysis

The petitioner has now submitted a Form G-325A for herself and the beneficiary. She has also demonstrated that she and the beneficiary met in person during the two-year period immediately preceding the filing of the Form I-129F. The petitioner filed the fiancé(e) petition with USCIS on November 16, 2010. Therefore, the petitioner and the beneficiary were required to have met in person between November 16, 2008 and November 16, 2010. The petitioner submitted a copy of her passport, which contains an exit stamp for her departure from ██████████ on August 7, 2010. She also submitted photographs of herself and the beneficiary during their engagement ceremony. These documents demonstrate that the petitioner met the beneficiary within the two-year period immediately preceding the filing of the Form I-129F.

The next issue to be addressed is whether the petitioner established that she would be able to conclude a valid marriage in the United States with the beneficiary at the time the petition was filed. The Board of Immigration Appeals (BIA) has long held that the validity of a marriage is determined by the law of the State where the marriage was celebrated. *In re Lovo-Lara*, 23 I&N Dec. 746, 753 (BIA 2005). The petitioner's state of residence, Michigan, prohibits marriage between first cousins. Mich. Comp. Laws Ann. § 551.3 (West 2011). On appeal, the petitioner asserts that she and the beneficiary will marry in New York. Marriage between first cousins is not prohibited under New York domestic relations law. N.Y. Dom. Rel. Law § 5 (McKinney 2011). In *Matter of Balodis*, the Regional

Commissioner determined that Michigan recognizes as valid marriages between first cousins that have been contracted in another state. 17 I&N Dec. 428, 429 (Comm. 1980). The Commissioner held that the petitioner satisfied the requirements of section 101(a)(15)(K) of the Act because she and the beneficiary “will be able to enter into a valid marriage outside of Michigan and to have that marriage recognized as valid upon their return to reside in Michigan.” *Id.*

Although marriage between first cousins in New York would be recognized as valid in Michigan, the petitioner has not established that she and the beneficiary would have been eligible to receive a marriage license in New York at the time the Form I-129F petition was filed. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit she is seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). The beneficiary was 17 years old at the time the petitioner filed the Form I-129F. New York domestic relations law requires parental consent for individuals who have applied for marriage licenses and are at least sixteen years of age but are under eighteen years of age. N.Y. Dom. Rel. law § 15 (McKinney 2011). A marriage in New York involving an individual who is under the age of legal consent is voidable. N.Y. Dom. Rel. law § 7 (McKinney 2011). In the RFE, the director requested the petitioner to submit evidence of parental consent or that a waiver of the minimum age requirement had been granted. The petitioner did not submit either of these documents. On appeal, the petitioner contends that the beneficiary is now over 18 years old. However, this new development is irrelevant for these proceedings. A petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In addition, the petitioner has still not submitted all of the required initial evidence. The record still lacks original statements from the petitioner and the beneficiary to establish their mutual intent to marry within 90 days of the beneficiary’s admission into the United States in K-1 status. These statements were requested by the director in the RFE, but the petitioner failed to submit them.

Conclusion

As the petitioner has not established that at the time of filing the petition she would have been able to conclude a valid marriage in the United States with the beneficiary and she still has not submitted all of the required initial evidence on appeal, the director’s decision to deny the petition shall not be disturbed. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition remains denied.