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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: SEP 09 2011

OFFICE: VERMONT 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 service center director denied the nonimmigrant visa petition and 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 citizen of Ethiopia, 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 petitioner concedes that she did not meet the beneficiary in person within the two-year period immediately preceding the filing of the petition as required. The director denied the petition on the basis of his determination that the petitioner had failed to demonstrate her eligibility for exemption from that requirement. On appeal, the petitioner explains her failure to meet the requirement and submits additional evidence.

Applicable Law

A “fiancé(e)” is defined at section 101(a)(15)(K) of the Act as someone who:

subject to subsections (d) and (p) of section 214, [is] 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 statutory requirement for in-person meeting between the petitioner and the beneficiary is further explained at 8 C.F.R. § 214.2(k)(2), which states the following:

The petitioner shall establish to the satisfaction of the director that the petitioner and K-1 beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the K-1 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. Failure to establish that the petitioner and K-1 beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and K-1 beneficiary have met in person.

Pertinent Facts and Procedural History

The petitioner filed the instant petition on August 4, 2010. The director issued a subsequent request for additional evidence, and the petitioner submitted a timely response. After considering the evidence of record, including the petitioner's response to the director's request, the director denied the petition on March 18, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

Exemption from Requirement for In-Person Meeting Within Two Years of Filing Petition

As the petition was filed on August 4, 2010, the petitioner is required by section 214(d)(1) of the Act and 8 C.F.R. § 214.2(k)(2) to demonstrate that she and the beneficiary met, in person, between August 4, 2008 and the date the petition was filed. The petitioner does not dispute that such a meeting never occurred during that timeframe.

The record contains evidence indicating that the petitioner and the beneficiary have spent at least two periods of time with one another in Ethiopia: (1) from April 20, 2008 until July 18, 2008; and (2) from January 1, 2011 until April 1, 2011. However, neither of these meetings took place within the relevant two-year period of time (August 4, 2008 to August 4, 2010) preceding the filing of the petition. The first meeting occurred prior to the relevant two-year period of time, and the second trip occurred subsequent to the relevant two-year period of time.

The relevant evidence submitted by the petitioner in support of her assertion that she was unable to meet the beneficiary between August 4, 2008 and August 4, 2010 is insufficient to demonstrate that she merits a favorable exercise of discretion to exempt her from this requirement under the regulation at 8 C.F.R. § 214.2(k)(2).

On appeal, the petitioner explains that she works two jobs to financially support her family and her fiancé in Ethiopia and that she could not spare the expense of travelling to Ethiopia to visit the beneficiary during the two-year period of time immediately preceding the filing of the instant petition. She also stated that she feared losing her job by requesting time off to travel. On appeal, the petitioner also submits a letter from a priest in Ethiopia who attests to the couple's intentions to marry upon the beneficiary's arrival in the United States. The priest confirms that the petitioner

visited the beneficiary in Ethiopia on two occasions, although he does not specify the dates of her visits.

The relevant evidence submitted below supports the petitioner's assertions regarding her earnings and financial support of the beneficiary. The relevant evidence does not, however, establish that complying with the in-person meeting requirement would have caused the petitioner extreme hardship. Section 214(d)(1) of the Act does not require any specific location for the personal meeting, only that it take place within the two-year period before the petition is filed. While travel obviously involves both time and financial commitments, there is no requirement for the petitioner and the beneficiary to meet in Ethiopia or the United States and the record lacks any explanation as to why meeting in a third country during the requisite period was not a viable option.

Nor does the relevant evidence establish that complying with the requirement would have violated strict and long-established customs of the beneficiary's foreign culture or social practice because the record shows that the petitioner and beneficiary have already met on numerous occasions. The petitioner stated that she began seeing the beneficiary when she was in high school in Ethiopia before she immigrated to the United States and the evidence shows that she spent three months in Ethiopia with the petitioner in 2008 (before the applicable two-year period) and another three months in 2011 (after the applicable two-year period). Accordingly, the petitioner has not established that she merits a favorable exercise of discretion to exempt her from the requirement to have met the beneficiary in person during the two years preceding the filing of this petition pursuant to the regulation at 8 C.F.R. § 214.2(k)(2).

Conclusion

On appeal, the petitioner has failed to overcome the director's ground for denying the petition and has failed to establish that she personally met with the beneficiary during the two-year period of time immediately preceding the filing of this petition or that she is exempt from that requirement. Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(K) of the Act and this petition must remain denied.

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 sustained that burden and the appeal will be dismissed.

The denial of this petition is without prejudice to the filing of a new petition. 8 C.F.R. § 214.2(k)(2). Although the couple's 2011 in-person meeting is not material here because it took place after the relevant two-period of time preceding the filing of the petition, it would be relevant to a future fiancé petition filed by the petitioner for the beneficiary within two years of that trip.

ORDER: The appeal is dismissed.