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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



86

Date: **AUG 14 2012**

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)

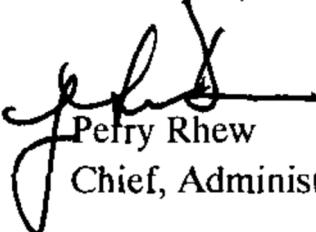
ON BEHALF OF PETITIONER: Self-represented

**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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Jeffrey Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center (the director), denied the nonimmigrant visa petition (Form I-129F), 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 the Philippines, 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 pursuant to 8 C.F.R. § 103.2(b)(1) because the petitioner was not a U.S. citizen at the time he filed the petition and U.S. Citizenship and Immigration Services (USCIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. On appeal, the petitioner submits the Form I-290B, Notice of Appeal, and a brief.

#### *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 or request that the missing initial evidence be submitted within a specific time period.

#### *Factual and Procedural History*

The petitioner filed the fiancé(e) petition with USCIS on September 6, 2011 with limited supporting evidence. On February 1, 2012, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit evidence to which the petitioner timely responded. On May 14, 2012, the director found that the petitioner became a U.S. citizen after he filed the Form I-129F and consequently denied the petition. On appeal, the petitioner provides a brief.

*Analysis*

The petitioner asserts that the director failed to issue a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 205.2; however, that regulation only applies to the revocation of an already approved petition. The director was not required to issue a NOID prior to denying the petition. See 8 C.F.R. § 103.2(b)(8)(iii).

On appeal, the petitioner concedes that he did not become a U.S. citizen until February 22, 2012, after the Form I-129F was filed, but contends that the petition should have been approved because he became a U.S. citizen prior to the adjudication of the Form I-129F. USCIS regulations 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). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, the petitioner was required to be a U.S. citizen prior to the September 6, 2011 filing of the instant Form I-129F. As a result, the beneficiary cannot benefit from the instant petition. Therefore, the appeal will be dismissed and the petition will remain denied. However, this decision is without prejudice to the future filing of any Form I-129F on the beneficiary's behalf.

Beyond the decision of the director, the AAO finds that the petitioner has submitted some, but not all, of the required initial evidence. The record still lacks an original statement from the beneficiary to establish her intent to marry the petitioner within 90 days of her admission into the United States in K-1 status.

*Conclusion*

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.