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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: **JAN 05 2012** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary:

PETITION: Nonimmigrant Petition for a Spouse Pursuant to § 101(a)(15)(K)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)(ii)

ON BEHALF OF PETITIONER:

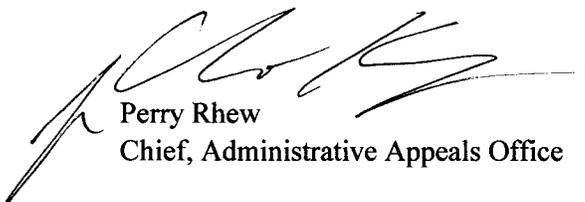
SELF-REPRESENTED

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, Vermont Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a U.S. citizen who seeks to classify the beneficiary, a native and citizen of Pakistan, as the K-3 spouse of a U.S. citizen pursuant to section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(ii).

Applicable Law

Section 101(a)(15)(K) of the Act allows an alien married to a U.S. citizen to be admitted to the United States as a nonimmigrant if he or she:

(ii) has concluded a valid marriage with a citizen of the United States . . . who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa....

Title 8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(k)(ii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F....

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 Form I-129F with U.S. Citizenship and Immigration Services (USCIS) on December 3, 2010, and indicated that he and the beneficiary were married. The director denied the petition on June 17, 2011 because the petitioner did not submit any initial evidence or supporting documentation, including proof of a pending or approved Form I-130, Petition for Alien Relative, filed by the petitioner on behalf of the beneficiary. The director noted that USCIS records also failed to show a pending or approved Form I-130. On appeal, the petitioner submits a copy of his marriage certificate with an English certified translation and photographs of his wedding ceremony.

USCIS databases show that the petitioner filed a Form I-130 petition on behalf of the beneficiary on November 28, 2011. The instant Form I-129F petition may not be approved, however, because USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit he is seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). 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). Therefore, the petitioner was required to file the Form I-130, Petition for Alien Relative, prior to the December 3, 2010 filing of the Form I-129F. There is no evidence in the record that a Form I-130 petition was filed by the petitioner on behalf of his wife prior to his submission of the Form I-129F. As a result, the beneficiary cannot benefit from the instant petition. Therefore, the appeal will be dismissed and the petition will be denied.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F petition, he should ensure that he has submitted all of the required documentary evidence. If necessary, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that he should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his home.

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.