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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

DG

[Redacted]

DATE: OFFICE: VERMONT SERVICE CENTER
JUN 18 2012

[Redacted]

IN RE: [Redacted]

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:
[Redacted]

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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director (the 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 Mexico, as the fiancé(e) of a United States citizen pursuant to section 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 pursuant to 8 C.F.R. § 103.2(b)(8)(ii) because the petitioner did not submit required initial evidence. On appeal, the petitioner 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 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 the petitioner 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.¹

Pertinent Facts and Procedural History

The petitioner filed the instant petition on February 4, 2011 with no supporting evidence and it was consequently denied on July 7, 2011.

¹ The *Instructions* to the Form I-129F may be found online at the USCIS website at <http://www.uscis.gov/files/form/i-129finstr.pdf> (last accessed May 30, 2012).

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.

Analysis

On appeal the petitioner submits some, but not all, required initial evidence. The record still lacks the following: (1) an original statement from the beneficiary discussing his intent to marry the petitioner within 90 days of his entry into the United States; (2) evidence the beneficiary is legally free to marry the petitioner;² (3) two Forms G-325A, Biographic Information: one executed by the petitioner, and one executed by the beneficiary; and (4) two passport-style color photographs: one of the petitioner, and one of the beneficiary. Absent all required initial evidence, the petition cannot be approved.

Conclusion

The petitioner has still failed to fully submit all required initial evidence on appeal. Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(K)(i) of the Act and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). She has not met her burden and the appeal will be dismissed.³

ORDER: The appeal is dismissed.

² The petitioner stated on the Form I-129F that the beneficiary was married previously and claims on appeal that his previous wife is no longer living. However, the record lacks a clear, legible copy and certified English translation of her death certificate. 8 C.F.R. § 103.2(b)(3). Although the petitioner instructs the AAO to access her electronic mail account in order to view this document and provides her username and password, we cannot access that account for any purpose, as the AAO is limited to the information contained in the record of proceeding when making a determination of statutory eligibility. *See* 8 C.F.R. § 103.2(b)(16)(ii). The record as currently constituted does not establish the beneficiary's eligibility to marry the petitioner.

³ On appeal the petitioner requests that we return her photographs and certain original documents. However, the AAO may not remove any documents from the record of proceeding. To have original documents returned to her, the petitioner must file Form G-884, Request for the Return of Original Documents. The *Instructions* to the Form G-884 may be found online at the USCIS website at <http://www.uscis.gov/files/form/g-884instr.pdf> (last accessed May 30, 2012). There is no filing fee associated with Form G-884.