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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

[Redacted]

DS

DATE **JUN 21 2012** OFFICE: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [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:

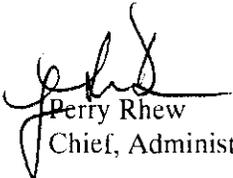
[Redacted]

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 in accordance with the instructions on 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 Pakistan, 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 on the basis of his determination that the petitioner failed to establish that he met the beneficiary in person within the two-year period immediately preceding the filing of the petition or that he is eligible for an exemption from that requirement. On appeal, counsel 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.

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 January 24, 2011. The director issued a subsequent request for additional evidence (RFE), and the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on July 12, 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 January 24, 2011, the petitioner is required by section 214(d)(1) of the Act and 8 C.F.R. § 214.2(k)(2) to demonstrate to the satisfaction of the director that he and the beneficiary personally met each other between January 24, 2009 and the date he filed the petition. The petitioner does not dispute that such a meeting never occurred during that period of time, and the director determined properly that the petitioner had failed to establish that he merits a favorable exercise of either of the discretionary waivers of this requirement described at 8 C.F.R. § 214.2(k)(2).

On appeal, counsel submits evidence indicating that the petitioner and the beneficiary met on January 27, 2011. However, this meeting does not satisfy section 214(d)(1) of the Act and 8 C.F.R. § 214.2(k)(2) because it did not take place within the two-year period immediately preceding the filing of this petition. Although the petitioner claims on appeal that counsel filed the petition before he and the beneficiary met in person in error, and that he did so against the petitioner's instruction not to do so, section 214(d)(1) of the Act and 8 C.F.R. § 214.2(k)(2) contain no provision for waiver of the in-person meeting requirement due to error on the part of counsel. Nor has the petitioner satisfied the requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637

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> (accessed June 1, 2012).

(BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) for establishing a claim based upon ineffective assistance of counsel.

This Decision Does Not Prejudice Future Fiancé Petitions

In accordance with the regulation at 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition. Although the couple's January 27, 2011 meeting is not material here because it took place outside of the relevant two-year period of time preceding the filing of the petition, it would be relevant to a future fiancée petition filed by the petitioner for the beneficiary within two years of that meeting.

Conclusion

On appeal, the petitioner has failed to overcome the director's ground for denying the petition and has failed to establish that he met the beneficiary in person within the two-year period of time immediately preceding the filing of the petition or that he qualifies for a discretionary waiver from that requirement. 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). He has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.