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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

DATE: JUN 29 2012 OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

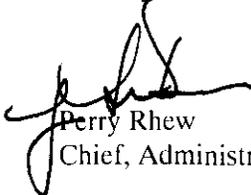
ON BEHALF OF PETITIONER:

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 Cambodia, 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 had 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, the petitioner's accredited representative 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 August 30, 2010. The director issued a subsequent request for additional evidence (RFE) and the petitioner, through his accredited representative, 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 28, 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. Beyond the decision of the director, we find additionally that the record lacks required initial evidence.

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

As the petition was filed on August 30, 2010, 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 another between August 30, 2008 and the date he filed the petition. Although the petitioner submits evidence indicating he and the beneficiary met in Cambodia between November 22 and December 5, 2011, that 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 during the two-year period immediately preceding the filing of this petition. Although the petitioner conceded on the Form I-129F that he and the beneficiary did not meet each other during the relevant two-year timeframe preceding the filing of the petition, he requests that we exercise of the discretionary waiver from this requirement found at 8 C.F.R. § 214.2(k)(2).

In the undated letter he submitted in response to the director's RFE, the petitioner claimed that although he had planned to visit the beneficiary in Cambodia in April 2010, that trip was postponed due to both financial hardship and illness of the beneficiary's father. The petitioner explained that although he then planned to travel to Cambodia in September 2010, he was unable to do so at that

¹ The *Instructions* to the Form I-129F may be found online at the USCIS website at [REDACTED]

time because his stepfather suffered an accidental gunshot wound two months prior to the trip and he stayed to help the family recover. The petitioner explained that he also experienced an automobile accident in October 2010, which delayed his trip further. He stated that he was finally able to travel to Cambodia and meet the beneficiary in November 2010.

In his August 15, 2011 affidavit submitted on appeal, the petitioner submits additional evidence and testimony regarding his inability to travel to Cambodia in order to meet the petitioner during the two-year period of time preceding the filing of the petition. He claims that the April 2010 trip did not take place because the beneficiary's father was ill and that it would have been culturally inappropriate for him to visit her at that time. He claimed that his stepfather suffered every medical complication possible while recovering from the gunshot wound, and that it took him three months to heal. The petitioner explained that his mother relied upon him for support during his stepfather's recovery. The petitioner also submits additional evidence and testimony regarding his October 2010 automobile accident on appeal. According to the petitioner, his lower back was injured, his forearm and inner thigh were bruised, and he was in physical therapy for a period of one month.

Upon review, the petitioner has failed to demonstrate that he is eligible for either discretionary waiver of the personal meeting requirement described at 8 C.F.R. § 214.2(k)(2). The petitioner has not established that he was unable to meet the beneficiary prior to his stepfather's injury, which took place on July 3, 2010. Although the petitioner claims that the beneficiary's father was ill, the record contains no evidence supporting that assertion. Nor does he submit any evidence to support his assertion that meeting the beneficiary during this time would have been culturally inappropriate. Nor does he submit any evidence to support his earlier claim that he was suffering financial hardship during that period of time. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Furthermore, 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 was no requirement for the petitioner to fly to Cambodia or for the beneficiary to travel to the United States, and the petitioner has not explained why meeting in a third country was not a viable option for them during the relevant two-year period of time. For all of these reasons, the petitioner has not established that he qualifies for the first discretionary waiver contained at 8 C.F.R. § 214.2(k)(2): that compliance with the in-person meeting requirement would have caused the petitioner extreme hardship.

The petitioner does not claim, and the record does not demonstrate, that meeting the beneficiary in person during the two-year period of time preceding the filing of the petition would have violated strict and long-established customs of the 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. The fact that the petitioner and beneficiary have already met each other would severely weaken any such assertion. Accordingly, the petitioner has failed to establish that he merits exercise of the second discretionary waiver described at 8 C.F.R. § 214.2(k)(2).

Required Initial Evidence

Beyond the decision of the director, the petition may not be approved for another reason, as the record still lacks required initial evidence. The record lacks an original statement from the beneficiary regarding her intent to marry the petitioner within 90 days of her entry into the United States.² Absent all required initial evidence, the petition cannot be approved.

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 November 2010 meeting is not material here because it took place outside of 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 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. Beyond the decision of the director, the petitioner has also failed to submit all required initial evidence.³ 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.

² Although the record contains a March 2, 2011 statement from the beneficiary expressing her desire to marry the petitioner, she made no reference to marrying him within 90 days of her entry into the United States, as specifically required by the *Instructions* to the Form I-129F.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).