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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: **MAR 12 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:

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 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 Guinea, 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 petition on two grounds: (1) that the petitioner failed to demonstrate that he and the beneficiary personally met one another during the two-year period preceding the filing of the petition or that he qualifies for a waiver from that requirement; and (2) that the beneficiary is already married to the petitioner and is therefore ineligible for classification as his fiancée. On appeal, the petitioner submits additional evidence and a statement made on the Form I-290B, Notice of Appeal or Motion.

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. . . .

Pertinent Facts and Procedural History

The petitioner filed the instant petition on March 9, 2011. The director issued a subsequent request for additional evidence (RFE), and the petitioner submitted a timely response. After considering the evidence of record, including the petitioner’s response to his request for additional evidence, the director denied the petition on August 23, 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 grounds for denying this petition.

Analysis

In his July 24, 2011 letter, the petitioner stated that he married the beneficiary in a religious ceremony celebrated on November 2, 2010. The director, therefore, found the beneficiary ineligible for classification as the petitioner's fiancée. In his undated letter submitted on appeal the petitioner does not establish that he is not already married to the beneficiary or that the religious wedding ceremony had no legal effect so as to render the couple legally unmarried. In his September 7, 2011 letter, [REDACTED] states that the beneficiary's family tradition mandates that a religious wedding ceremony occur prior to a civil ceremony, and that a civil ceremony must occur as soon as the beneficiary departs Guinea, but he does not show that the religious ceremony would not be recognized by the relevant civil authorities in Guinea. As the record establishes that the petitioner and the beneficiary are already married to one another, the beneficiary is not eligible for classification as his fiancée.

The director also found that the petitioner had failed to establish that he and the beneficiary personally met one another during the two-year period preceding the filing of the petition or, in the alternative, that he qualifies for exemption from that requirement because doing so would have either caused him extreme hardship; or that doing so would have violated strict and long-established customs of the beneficiary's culture or social practice. The petitioner stated on the Form I-129F that he and the beneficiary personally met one another during the two-year period preceding the filing of the petition. He claimed that they met in 2009, that they spoke to one another in a friendly manner, and that she asked him for his telephone number. However, he did not submit any documentary evidence in support of his assertion. On appeal, the petitioner now claims that he and the beneficiary did not personally meet one another during the relevant period of time due to traditional tribal custom. However, the petitioner does not explain the inconsistency between his statements below and on appeal and the evidence submitted on appeal is insufficient to establish his eligibility for an exception from the in-person meeting requirement.

Conclusion

On appeal, the petitioner has failed to overcome the director's grounds for denial of the petition and has not established that he is not already legally married to the petitioner and that he personally met the petitioner during the two-year period preceding the filing of the petition or that he qualifies for exemption 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.