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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 14 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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 the Philippines, 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 the basis of her determination that the petitioner failed to establish either that she met the beneficiary in person within the two-year period immediately preceding the filing of the petition or that she is eligible for an exemption from that requirement. 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 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 February 24, 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 the RFE, the director denied the petition on July 13, 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 February 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 that she and the beneficiary met one another, in person, between February 24, 2009 and the date she filed the petition. Although the petitioner concedes she and the beneficiary did not meet one another within that timeframe, she requests an exemption from the requirement.

In her letters submitted below, the petitioner stated that she started a new job in October 2009 and was therefore unable to visit the Philippines in December 2009 as initially planned, and she reiterates this assertion on appeal. The record also contains a letter from [REDACTED] petitioner's [REDACTED] who stated that the petitioner works as the direct caregiver for two developmentally disabled individuals in a group home. [REDACTED] explained that the petitioner cared for these same two individuals while working for another company, and that when that company went out of business, the two individuals were placed in their current home on the

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 March 1, 2012).

condition that the petitioner continue as their direct caregiver. ██████████ claimed that because these individuals have “behavioral deficits” and become easily frustrated over changes to their routines, it would have been very difficult for the petitioner to take a month-long vacation to the Philippines.

Upon review, the petitioner has failed to demonstrate that she is eligible for one of the discretionary waivers of the personal meeting requirement contained at 8 C.F.R. § 214.2(k)(2). Although the testimony from her employer establishes her inability to visit the Philippines for a month-long period, the petitioner does not explain why she could not go for a shorter period of time. Furthermore, even if she and the beneficiary were unable to meet one another in the Philippines, the petitioner has not demonstrated their inability to meet in a third country. She has therefore not established that she qualifies for the first discretionary waiver contained at 8 C.F.R. § 214.2(k)(2): compliance would result in extreme hardship to her. She has also failed to establish her eligibility for the second discretionary waiver described at 8 C.F.R. § 214.2(k)(2): that meeting the beneficiary in person within the relevant two-year period immediately preceding the filing of the petition would violate 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 petitioner’s assertion made on appeal that she and her fiancé have never lived together because their Catholic faith forbids premarital cohabitation does not establish her eligibility for this waiver. She does not argue or otherwise establish that the beneficiary’s culture or social practice includes arranged marriages and prohibits them from meeting one another prior to being married, and any such assertion would be undermined by the fact that they have already met one another in person.

Beneficiary’s Intent to Marry the Petitioner

Beyond the decision of the director, the petition may not be approved for another reason, as the record lacks an original statement from the beneficiary regarding the couple’s relationship and his intent to marry the petitioner. Absent all required initial evidence, the petition cannot be approved.

Conclusion

On appeal, the petitioner has failed to overcome the director’s ground for denying the petition and has not established that compliance with the personal meeting requirement would have resulted in extreme hardship or that doing so would have violated strict and long-established customs of the beneficiary’s foreign culture or social practice, as explicated in the regulation at 8 C.F.R. § 214.2(k)(2). Beyond the decision of the director, the petitioner has also failed to submit all required initial evidence.²

² 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).



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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.

ORDER: The appeal is dismissed.