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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: VERMONT 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,

Jerry 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 Afghanistan, 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 his determination that the petitioner failed to establish 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.<sup>1</sup>

#### *Pertinent Facts and Procedural History*

The petitioner filed the instant petition on March 11, 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 September 6, 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. 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 March 11, 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 she and the beneficiary personally met one another between March 11, 2009 and the date she filed the petition. The petitioner stated on the Form I-129F that she and the beneficiary met one another at a family gathering in Afghanistan in 2006, and her sister's testimony indicates the petitioner and beneficiary met again in Afghanistan in June 2011 when they celebrated their engagement. On appeal the petitioner concedes that she and the beneficiary did not personally meet another during the relevant two-year timeframe. Instead, she argues that she merits exercise of the discretionary waiver from this requirement found at 8 C.F.R. § 214.2(k)(2).

The petitioner claims that meeting the beneficiary in person during the relevant two-year timeframe would have violated the beneficiary's culture and social practices. In support of that assertion, she submits a letter from [REDACTED]

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<sup>1</sup> 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).

In his September 27, 2011 letter, ██████████ states that social mixing between unrelated men and women is discouraged in the petitioner's culture and that unless brides and grooms are already related to one another, they normally have no contact prior to their engagement ceremony. He explains that representatives of the prospective bride and groom arrange the match, and that although some families will allow telephone conversations, no physical contact is permitted during this process. According to ██████████ an engagement party is held once a definitive decision to marry is made, and that the prospective bride and groom then have the opportunity to get to know one another. ██████████ also claims that the petitioner and the beneficiary did not meet one another before their engagement.

The relevant evidence does not establish that the petitioner is eligible for either discretionary waiver of the personal meeting requirement contained at 8 C.F.R. § 214.2(k)(2). The petitioner does not assert, and the record does not establish, that she qualifies for the first discretionary waiver: compliance would cause her extreme hardship.

Nor does the relevant evidence establish her eligibility for the second discretionary waiver contained 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. ██████████ does not claim that the petitioner and beneficiary are prohibited from seeing another before their wedding day: he indicates that since they have now celebrated their engagement ceremony, the petitioner and beneficiary "have time to get to know each other better." He implies that the petitioner and beneficiary may now see one another in person freely, and the photographs submitted by the petitioner indicate that they have indeed now seen one another. Rather, ██████████ emphasizes that the petitioner and the beneficiary were not allowed to see one another prior to their *engagement*. However, the discretionary waiver set forth by 8 C.F.R. § 214.2(k)(2) does not address such a scenario: the waiver is provided only for situations in which a petitioner and beneficiary are not permitted to see one another prior to their *marriage*.

Furthermore, ██████████ assertion that the petitioner and beneficiary did not meet in person before they were engaged conflicts with the petitioner's claim made on the Form I-129F that she met the beneficiary in Afghanistan in 2006 at a family gathering, and that they continued their relationship through online chats and telephone conversations.

The petitioner has failed to establish her eligibility for either discretionary waiver of the personal meeting requirement contained at 8 C.F.R. § 214.2(k)(2).

#### *The Petitioner and Beneficiary's Intent to Marry*

Beyond the decision of the director, the petition may not be approved for another reason, as the record lacks original statements from the petitioner and the beneficiary regarding the couple's mutual

intent to marry within 90 days of the beneficiary's arrival in the United States. Absent all required initial evidence, the petition cannot be approved.

*This Decision Does Not Prejudice Future Fiancé Petitions*

As noted, the regulation at 8 C.F.R. § 214.2(k)(2) states that the denial of this petition is without prejudice to the filing of a new petition. Although the couple's 2011 personal 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 her trip to Afghanistan.

*Conclusion*

On appeal, the petitioner has failed to overcome the director's ground for denying the petition and has not established that she met the beneficiary in person within the two-year period of time immediately preceding the filing of the petition or that she qualifies for a discretionary waiver of that requirement. Beyond the decision of the director, the petitioner has also failed to submit all required initial evidence.<sup>2</sup> 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.

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<sup>2</sup> 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 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).