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

b6

[redacted]

Date: OCT 1 5 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner:
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 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 Director, California Service Center (the director), denied the nonimmigrant visa petition (Form I-129F), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Ukraine, 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 nonimmigrant visa petition because the petitioner and the beneficiary failed to meet in person during the two-year period immediately preceding the filing of the petition. On appeal, the petitioner submits a Form I-290B, Notice of Appeal and additional evidence.

Applicable Law

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

> subject to subsections (d) and (p) of section 214, 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. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

> (1) result in extreme hardship to the petitioner; or
>
> (2) that compliance 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. 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.

The regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

Facts and Procedural History

The petitioner filed the Form I-129F with USCIS on September 6, 2011. Therefore, he and the beneficiary were required to have met in person between On the Form I-129F, the petitioner indicated that he had met the beneficiary seven years ago when he was a missionary in the Ukraine. In a letter appended to the Form I-129F, the petitioner stated that he traveled to the Ukraine each year for ten years during which time met the beneficiary, but that his health would no longer allow him to travel to the Ukraine after 2009. On January 28, 2012, the director issued a Request for Evidence (RFE) to provide the petitioner with an opportunity to submit evidence establishing that he and the beneficiary met in person within the two-year period before the filing of the petition, or evidence relating to the exemption of the in-person meeting requirement at 8 C.F.R. § 214.2(k)(2). In response, the petitioner submitted a letter from his physician, which the director found insufficient, and the director subsequently denied the petition. On appeal, the petitioner submits another letter purportedly from

Analysis

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find no error in the director's decision to deny the petition.

Although he indicated that he last visited the Ukraine in 2009, the petitioner did not state the specific timeframe of this 2009 visit or provide any documentation of such trip. The photograph of the petitioner and the beneficiary that was submitted in response to the RFE was undated and, therefore, insufficient to establish that the petitioner and the beneficiary met in person during the two-year period immediately preceding the filing of the petition.

In his initial letter, dated February 7, 2012 stated that travel to the Ukraine for the petitioner "is not tenable at age 93," but he failed to provide a medical diagnosis of the petitioner or explain the reasons why the petitioner could not travel. On appeal, the petitioner submits a second letter, dated May 14, 2012, which is purportedly written by however, this letter contains a photocopy of signature, and the contents of the letter are not written with the same grammar and tone as first letter. The AAO, therefore, questions its authenticity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The record lacks credible and probative evidence that the petitioner merits a favorable exercise of discretion to exempt him from the personal meeting requirement pursuant to section

214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). Accordingly, the AAO will not disturb the director's decision to deny the petition.

Beyond the director's decision, even if the petitioner had established his eligibility for an exemption of the in-person meeting requirement, this petition could not be approved, as the record still lacks proof of the termination of the beneficiary's marriage to her prior husband.[1]

Section 214(d)(1) of the Act requires the submission of evidence to establish that the petitioner and the beneficiary are "legally able . . . to conclude a valid marriage in the United States. . . ." A marriage will be valid for immigration purposes only where any prior marriage of either party has been legally terminated and both individuals are free to contract a new marriage. *See Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). While the petitioner provided evidence of the termination of his two prior marriages, the Form I-129F and Biographical Information Sheet (Form G-325) indicate that the beneficiary was previously married to and the record does not contain a divorce decree or death certificate to establish the legal termination of that marriage. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Conclusion

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition remains denied.

[1] Name withheld to protect identity.