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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: AUG 0 5 2013 Office: VERMONT SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, 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 a citizen of the Ghana, as the fiancée 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 because the petitioner had failed to: (1) establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition; or (2) submit sufficient evidence that meeting the beneficiary in person would have been an extreme hardship for him. The director also determined that the petitioner failed to establish that he was legally free to marry the beneficiary at the time the petition was filed. On appeal, the petitioner provides a statement 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):

> 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.

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on October 19, 2011. Therefore, the petitioner and beneficiary were required to have met between October 19, 2009 and October 19, 2011. On the Form I-129F, the petitioner indicated "no" to the question about whether he and the beneficiary had met in person within the two-year period preceding the filing of the petition. The petitioner explained that the beneficiary is his ex-girlfriend and mother of three of his children. He stated that they did not get married due to a misunderstanding but that they reconciled over the phone. He further stated that he was unable to travel because of financial hardships. The petitioner submitted a "Notarized Agreement re: the Care of Children and Benefits from Assets in this Marriage" as evidence of the termination of a prior marriage in Japan and two divorce decrees as evidence of the termination for two other prior marriages.

On February 29, 2012, the director issued a request for evidence (RFE) to the petitioner, requesting him to provide, *inter alia*, additional evidence demonstrating compliance with the meeting requirement or evidence that compliance would cause him extreme hardship, or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. The director also requested evidence of the termination of the petitioner's prior marriage in Japan. In response to the RFE, the petitioner submitted a brief statement indicating that he travelled to Ghana to meet the beneficiary, photographs of himself and the beneficiary, an admission stamp from his passport, which shows that he traveled to Ghana on April 5, 2012, and an electronic airline ticket confirmation. Therefore, the record reflects that the couple met in person after the petition was filed. The petitioner did not submit additional evidence to show that his prior marriage was terminated.

On June 21, 2012, the director denied the petition, concluding that the petitioner did not establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition, or establish that meeting the beneficiary in person would have been an extreme hardship for him. The director further determined that the petitioner failed to establish that his prior marriage in Japan was legally terminated.

Analysis

On appeal, the petitioner submits a copy of his prior wife's Japanese family registry as evidence of their divorce. While the petitioner's marriage to his prior wife is not listed in her family registry, he is listed as the father of their son born in 1995 and it also shows that she married and divorced subsequent to her relationship with the petitioner. During this time, the record shows that the petitioner was married then divorced from his second wife and married to his third wife. Accordingly, the petitioner has established the legal termination of his first marriage.

However, upon a full review of the record, the petitioner has still not established that he met the beneficiary during the requisite two-year period. The petitioner submitted evidence that he met the beneficiary after this period, in April of 2012. While the evidence of the couple's meeting would be

relevant to any new fiancée petition that the petitioner may file for the beneficiary in the future, it has no relevance to whether the couple met during the period applicable to this petition, which was between October 19, 2009 and October 19, 2011. Further, the petitioner submitted no evidence on appeal to overcome the director's determination that the petitioner's financial hardship did not rise to the level of extreme hardship necessary to waive this requirement.

Conclusion

The statutorily required personal meeting between the petitioner and the beneficiary did not occur during the requisite time period and the petitioner has not demonstrated that he is eligible for a discretionary waiver of such a requirement. Consequently, the beneficiary may not benefit from the instant petition and it must remain denied. The appeal is, therefore, dismissed. As stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition now that the petitioner and the beneficiary have more recently met in person.

In fiancé(e) visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. sec 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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