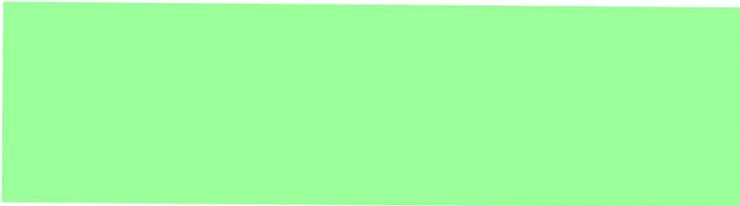


(b)(6)



U.S. Citizenship
and Immigration
Services



Date: DEC 20 2013

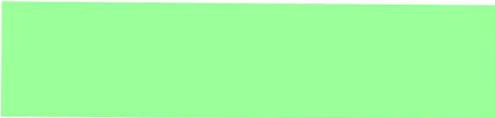
Office: CALIFORNIA SERVICE CENTER



IN RE:

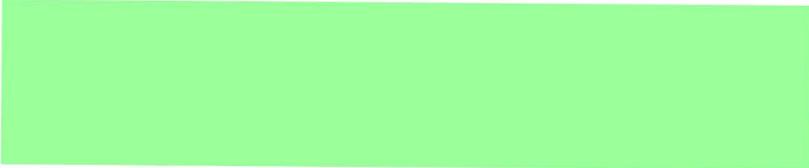
Petitioner:

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:



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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (the director), denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The appeal will be sustained and the petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Canada, as the fiancée of a United States citizen pursuant to section 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 failed to submit any initial evidence or supporting documentation. On appeal, the AAO determined that the petitioner submitted some but not all of the required initial evidence and affirmed the director's decision. On motion, the petitioner, through counsel, submits 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 his discretion may waive the requirement that the parties have previously met in person. . . .

Factual and Procedural History

The petitioner filed the fiancée petition with USCIS on July 26, 2012 without any supporting evidence. For this reason, the director denied the petition on April 24, 2013. On appeal, the petitioner provided some but not all of the required initial evidence. In its August 7, 2013 decision, the AAO determined that the petitioner failed to establish that he met the beneficiary in person between July 26, 2010 and July 26, 2012, which is the two-year period immediately preceding the filing of the petition, or provide evidence that the petitioner merits a favorable exercise of discretion to exempt him from such a requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2).

The AAO's prior decision is incorporated here. The petitioner, through counsel, timely filed a motion to reopen. Counsel's brief and the additional evidence meet the requirements for a motion to reopen. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir.

2004). Upon reopening, full review of the record establishes the petitioner's and beneficiary's eligibility for the sought benefit. The appeal will be sustained for the following reasons.

Analysis

On motion, the petitioner submits the following: a personal affidavit; an affidavit from the beneficiary; affidavits from friends and family; film-dated photographs and dated Facebook printouts showing the petitioner and the beneficiary together during the requisite two-year period; birthday and holiday cards exchanged between the petitioner and the beneficiary; and credit card statements for the beneficiary showing charges that she made while visiting the petitioner in Minnesota and during a trip to Mexico that they took together in January of 2011.

The petitioner has submitted on motion all of the required initial evidence including: proof of the petitioner's U.S. citizenship; a Form G-325A, Biographic Information, for the petitioner and the beneficiary; two (2) passport-style color photographs of the petitioner and the beneficiary; original statements from the petitioner and the beneficiary to establish their mutual intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status; photographs of the petitioner with the beneficiary as evidence that the petitioner and the beneficiary have met in person between July 26, 2010 and July 26, 2012, which is the two-year period immediately preceding the filing of the petition; and evidence that the petitioner was legally free to marry the beneficiary at the time of filing the Form I-129F.

Conclusion

In fiancé 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. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The motion is granted. The appeal is sustained. The petition is approved.