

(b)(6)

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

Date:

DEC 30 2013

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (“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 petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ghana, as the fiancé 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 petition because the petitioner had failed to: (1) establish that she 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 a hardship for her. The director also determined that the petitioner failed to submit an original letter of intent to marry within 90 days of the beneficiary’s admission into the United States in K-1 status from the beneficiary

On appeal, the petitioner submits 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. . . .

The statutory requirement of an in-person meeting between the petitioner and the beneficiary is further explained at 8 C.F.R. § 214.2(k)(2), which states:

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.

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on July 25, 2012. Therefore, the petitioner and beneficiary were required to have met between July 25, 2010 and July 25, 2012. On the Form I-129F, the petitioner indicated "yes" to the question about whether she and the beneficiary had met in person within the two-year period preceding the filing of the petition. On the Form I-129F, she explained that she and the beneficiary met through a childhood friend during her last visit to Ghana.

On April 24, 2013 the director issued a request for evidence (RFE) of, among other things, compliance with the meeting requirement or evidence that compliance would cause the petitioner extreme hardship, or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. In response to the RFE, the petitioner submitted: a copy of her U.S. passport information pages with entry stamps for Ghana; a copy of the beneficiary's passport; two passport style photographs for the petitioner and beneficiary; an original letter of intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status from the petitioner; a birth certificate for the beneficiary; a copy of a boarding pass; and photographs of the petitioner and the beneficiary together.

On August 5, 2013, the director denied the petition, concluding that the petitioner: did not establish that she and the beneficiary met in person within the two years immediately preceding the filing of the petition; did not establish her eligibility for a waiver of that requirement; and did not submit an original letter of intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status from the beneficiary.

Analysis

On appeal, the petitioner submits an original letter from the beneficiary stating his intent to marry the petitioner within 90 days of his entry into the United States. Accordingly, this portion of the director's decision is withdrawn.

However, upon a full review of the record, the petitioner has still not established that she met the beneficiary during the requisite two-year period. The petitioner states that she travelled to Ghana in 2009 and submits a copy of an illegible boarding pass, a copy of the petitioner's boarding pass for travel on April 17, 2013, a travel itinerary for travel to Ghana on the dates November 26, 2009 to December 31, 2009, and photographs of the petitioner with the beneficiary film dated in 2009 and 2013. Although the date of the first boarding pass is unclear, the 2009 claimed date of travel is prior to the requisite two-year period and the second boarding pass is evidence that the petitioner met the beneficiary after this period, in April of 2013. 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 July 25, 2010 and July 25, 2012. Additionally, the petitioner has not requested nor submitted any evidence that she is eligible for a discretionary waiver of the in-person meeting and her 2013 trip to Ghana where the beneficiary resides demonstrates her ability to travel to meet him.

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 she 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 as the petitioner and the beneficiary have recently met in person.

In fiancée 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.