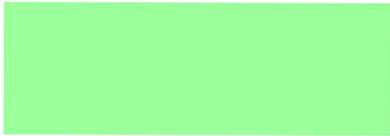
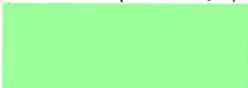


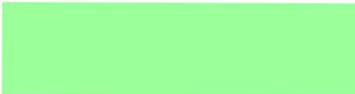
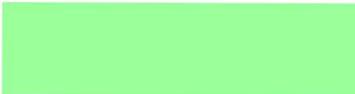


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **FEB 21 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:

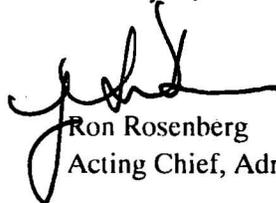
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. 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,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California 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 U.S. citizen who seeks to classify the beneficiary, a native and citizen of Mexico, as the fiancé(e) of a U.S. 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 failed to establish that she and the beneficiary met in person during the two-year period immediately preceding the filing of the Petition for Alien Fiancé(e) (Form I-129F). On appeal, the petitioner submits a statement and additional evidence.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K) provides that subject to subsections (d) and (p) of section 214, nonimmigrant classification may be provided to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

[S]hall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two 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. . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on July 27, 2011. The petitioner indicated on the Form I-129F that she and the beneficiary have been residing in California as a "common law" married couple for eleven years and they have two children together. On April 4, 2012, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner meeting the beneficiary in person between July 27, 2009 and July 26, 2011, which is the two-year period immediately preceding the filing of the petition, or evidence that the petitioner merits a favorable exercise of discretion to exempt her from such requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). The petitioner responded with

additional evidence, which the director found insufficient to establish eligibility, and she denied the petition accordingly.

On appeal, the petitioner asserts that she and the beneficiary are now legally married. She states that she has been residing with the beneficiary since 1999 and their twin sons were born in 2001. The petitioner submits a photocopy of a Certificate of Marriage issued by the [REDACTED], which reflects that the petitioner wed the beneficiary on June 28, 2012 in Huntington Park, California. She also provides her children's birth certificates, a residential lease, a utility bill and a bank letter.

The evidence presented by the petitioner reflects that she and the beneficiary resided together both before and after the requisite period. None of the documents submitted by the petitioner are for the requisite time period of July 27, 2009 and July 27, 2011. Even if the petitioner established that she and the beneficiary were together during the requisite period, her marriage to the beneficiary renders him ineligible for nonimmigrant benefits under § 101(a)(15)(K)(i) of the Act, which are limited to a fiancé(e) of a U.S. citizen.<sup>1</sup> Under section 214(d)(1) of the Act, the approval of a fiancé(e) petition requires the petitioner and the beneficiary to be "legally able . . . to conclude a valid marriage in the United States. . . ." Since the petitioner and beneficiary are already married, the beneficiary is no longer eligible for nonimmigrant classification as a K-1 fiancé of a U.S. citizen. Accordingly, the appeal is dismissed. The petition must be denied.

8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, . . . the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F. . . .

The AAO notes that the beneficiary may be eligible to apply for classification as a K-3 nonimmigrant. If the beneficiary seeks to be classified as a K-3 nonimmigrant, the regulations at 8 C.F.R. § 214.2(k)(7) require that a Form I-130, Petition for Alien Relative, be approved prior to the proper filing of a Form I-129F petition on behalf of the beneficiary.

In these proceedings, the petitioner bears the burden of proof to establish her 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

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

<sup>1</sup> A 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 (9th Cir. 2003).