



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JUN 29 2013** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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 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. 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,

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

Ron Rosenberg
Acting 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 a citizen of Russia, as the fiancé 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 a hardship for him. The director also determined that the beneficiary’s Form G-325A was not submitted. 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. 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 June 4, 2012. Therefore, the petitioner and beneficiary were required to have met in person between June 4, 2010 and June 4, 2012. On the Form I-129F, the petitioner indicated "no" to the question about whether she and the beneficiary had met in person within the two-year period preceding the filing of the petition. The petitioner explained that she and the beneficiary were together for five and a half years before he was removed from the United States and that the two had planned to get married.

On September 20, 2012, the director issued a request for evidence (RFE) to the petitioner, requesting her to provide additional evidence demonstrating compliance with the meeting requirement or evidence that compliance would cause her extreme hardship, or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. The director also requested that the petitioner submit a properly completed and signed Form G-325A for the beneficiary and letters of intent to marry from both the petitioner and beneficiary. In response to the RFE, the petitioner submitted letters of intent to marry from herself and the beneficiary and an undated photograph of her and the beneficiary.

On January 4, 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, or establish that meeting the beneficiary in person would have been a hardship for her. In addition, the director determined that the beneficiary's Form G-325A was never submitted as required.

Analysis

Upon a full review of the record, including the evidence submitted on appeal, we find no error in the director's decision to deny the petition. The petitioner requests an exemption of the in-person meeting requirement due to her extreme fear of flying. On appeal, she submits a statement on the Form I-290B Notice of Appeal or Motion, a Form G-325A for the beneficiary, a letter from the beneficiary to the City of Kodiak, an unsigned legal services agreement, a letter from the petitioner inviting the beneficiary to visit, various forms of identification for the beneficiary, a copy of the beneficiary's work authorization application, and a copy of the beneficiary's certificate of completion for a school bus driver training program. In her statement, the petitioner briefly states that she cannot travel to Russia because she has a major fear of flying and fears for her safety in Russia. The petitioner did not, however, provide any probative information or submit any documentation regarding her inability to travel or eligibility for an exemption to the in-person meeting requirement.

Additionally, a review of the administrative record shows that the beneficiary was removed from the United States on December 6, 2004. However, the residence history on the Form G-325A, dated November 10, 2012, indicates that the beneficiary resides in Alaska and has resided in Alaska since January of 2001. While it is not necessary for the submitted Form G-325A to be signed by a beneficiary who is living abroad, the submitted form must contain correct information in order to be properly executed.

Conclusion

The petitioner failed to establish that the statutorily required personal meeting between the petitioner and the beneficiary occurred during the requisite time period and the petitioner has not demonstrated that she is eligible for a discretionary waiver of such a requirement. The petitioner has also failed to submit a properly executed Form G-325A for the beneficiary. 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.

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's 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.

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