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

Date: OCT 0 4 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,

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 of India and a citizen of Australia, 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 nonimmigrant visa petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii) because the petitioner failed to submit required initial evidence. On appeal, the petitioner 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 [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 parties 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.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a Petition for Alien Fiancé(e) (Form I-129F), including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

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 November 27, 2012 without any supporting evidence. For this reason, the director denied the petition on April 30, 2013. 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 briefly explained that she met the beneficiary through the internet.

Analysis

On appeal, the petitioner provides additional evidence which includes the following: evidence of the petitioner's United States citizenship; Forms G-325A, Biographic Information, for 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 and the beneficiary together; and two passport-style color photographs of the petitioner and beneficiary. The petitioner also submits evidence that the beneficiary traveled to the United States to visit her in February of 2013. This evidence includes an admission stamp from the beneficiary's passport showing that he traveled to the United States on February 13, 2013, an airline travel itinerary, a hotel receipt, and photographs of the petitioner and the beneficiary together. Therefore, the record reflects that the couple met in person after the petition was filed.

A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). 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 November 27, 2010 and November 27, 2012.

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 did not initially submit the required evidence nor did she request an exemption from the two-year in-person meeting requirement. In her letter on appeal, she states that she could not visit the beneficiary after they began dating online for cultural reasons and because her parents did not know about the relationship. She further explains that the beneficiary could not take the time off from work to visit her. She states that once she told her parents, they helped her file the instant Form I-129F. The petitioner also submits a letter from the beneficiary who states that they could not meet in person because of their culture and religion.

The statements of the petitioner and the beneficiary are insufficient to establish that meeting during the requisite period would have violated strict and long-established customs of the beneficiary's culture or social practice or would have caused the petitioner extreme hardship. She did not provide any probative information or submit any documentation regarding her or the beneficiary's inability to travel or otherwise establish her eligibility for an exemption to the in-person meeting requirement. While the record shows that the beneficiary and the petitioner met in the United States in February 2013, their meeting occurred after submission of the Form I-129F. The petitioner has not shown that she and the beneficiary met during the two years before the Form I-129F was filed, between November 27, 2010 and November 27, 2012. The record also lacks sufficient evidence that the petitioner merits a favorable exercise of discretion to exempt her from the in-person meeting requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2).

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 now that the petitioner and the beneficiary have recently met in person.

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 not been met.

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