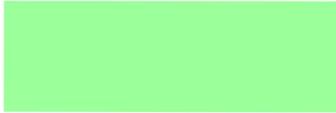


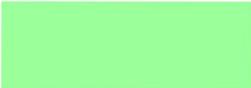
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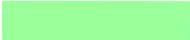
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **DEC 05 2014** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)(i)

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. 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, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and 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 Laos, as the fiancé(e) 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 nonimmigrant visa petition because she found that the petitioner and the beneficiary were related as half-siblings or first cousins, that the law in the state of intended residence, Iowa, prohibits the marriage of first cousins, and that all states prohibit the marriage of siblings. The director also found that the International Marriage Broker Regulation Act of 2005 (IMBRA) prohibits the approval of the instant petition, as the petitioner has had a K-1 visa petition approved within two years prior to the filing of the current petition, and has not sought or received a waiver of the limitation.

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 states, in part:

The petition . . . shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties . . . have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States . . .

Section 214(d)(2)(A) of the Act provides, in part, that:

the Secretary of Homeland Security may not approve a petition under paragraph (1) unless the Secretary has verified that –

- (i) The petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and
- (ii) If the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

Section 214(d)(2)(B) of the Act provides that U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, waive the filing limitations if justification exists for such a waiver.

Facts and Procedural History

The petitioner filed the fiancé(e) petition with USCIS on August 21, 2012. On December 5, 2013, the director issued a request for evidence (RFE) stating that agency records establish that the petitioner and the beneficiary are either first cousins or half-siblings and intend to marry and reside in Iowa. The director requested that the petitioner submit evidence of his ability to conclude a valid marriage in the state of intended residence, and a waiver under IMBRA, as the petitioner obtained an earlier approved Form I-129F within two years of filing the current petition. Upon review of the evidence submitted in response, the director found that the petitioner did not overcome her concerns about the family relationship between the petitioner and the beneficiary, and that the petitioner was not eligible for the nonimmigrant visa under the provisions of IMBRA.

On appeal, the petitioner submits the results of two DNA tests. A Final Certificate of Analysis dated September 4, 2014 indicates that it is unlikely that [REDACTED] are half-siblings. A Final Certificate of Analysis dated September 5, 2014 finds it more likely than not that [REDACTED] is not related to [REDACTED] as his aunt. The DNA test results identify the persons tested by name only.

Analysis

The director found that the petition could not be approved, as the petitioner and the beneficiary are either half-siblings or first cousins, and that the petitioner could thus not enter into a valid marriage in the State of Iowa, the state of intended residence. While the petitioner submitted results of DNA tests on appeal, the identities of the persons tested and the procedures followed to ensure the accurate identities of such persons, have not been established. We do not find the test results submitted on appeal to establish by a preponderance of the evidence the lack of a sibling relationship between the petitioner and the beneficiary, and the lack of a second degree relationship between petitioner and his aunt.

The Board of Immigration Appeals (BIA) has long held that the validity of a marriage is determined by the law of the state where the marriage was celebrated. *In re Lovo-Lara*, 23 I&N Dec. 746, 753 (BIA 2005). The petitioner's state of intended residence, Iowa, declares as void marriage between siblings and/or marriage between first cousins. Iowa Code Annotated § 595.19. On appeal, the petitioner asserts that he and the beneficiary will marry in one of the states that allow first cousins to wed. Nevertheless, Iowa does not recognize marriages performed in another state if the marriage is considered to be void under Iowa law. Iowa Code Annotated § 595.20. As first cousins, the petitioner and the beneficiary's marriage in a state that recognizes marriage between first cousins would not be recognized as valid upon their return to Iowa. Thus, we affirm the director's finding that, at the time of filing the petition, the petitioner and the beneficiary could not enter into a valid marriage in the United States.

The director also found that IMBRA prohibits the approval of the instant petition, as the petitioner has not requested a waiver of the limitations imposed by the statute. IMBRA imposes limitations on the number of petitions a petitioner for a K nonimmigrant visa for an alien fiancé(e) (K-1) may file or have approved without seeking a waiver of the application of those limitations. If the petitioner has had a K-1 visa petition approved within two years prior to the filing of the current petition, the petitioner must request a waiver. In this matter, the petitioner previously filed a K-1 visa petition that was approved on January 9, 2012. The current petition was filed on August 12, 2012, within two years of the previous approval. Thus, the petitioner was required to request a waiver of the requirement, and has not done so. For this additional reason, the director's decision will be affirmed.¹

Conclusion

The petitioner has not established that at the time of filing the petition he would have been able to conclude a valid marriage in the United States with the beneficiary. Further, the record establishes that the petition is subject to the limitations of IMBRA, and the petitioner has not requested a waiver. As such, the director's decision to deny the petition shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. 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, the petitioner has not met that burden.

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

¹ An application or 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).