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: JAN 10 2014 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 and citizen of Laos, as the fiancé(e) 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 failed to establish compliance with the requirements under the International Marriage Broker Regulation Act (IMBRA) of 2005, Pub. L. No. 109-162 dated January 5, 2006.

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 his 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.

On January 5, 2006, the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006), 8 U.S.C. § 1375a. Title VII of VAWA 2005 is entitled "Protection of Battered and Trafficked Immigrants," and contains Subtitle D, "International Marriage Broker Regulation" (IMBRA). IMBRA provides that a petitioner for a nonimmigrant visa for an alien fiancé(e) (K-1) or alien spouse (K-3) must submit with his or her Form I-129F information on any criminal convictions for any of the following "specified crimes":

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes.
- Crimes relating to a controlled substance or alcohol where the petitioner has been convicted on at least three occasions and where such crimes did not arise from a single act.

If the petitioner indicates that he or she has been convicted by a court or by a military tribunal for one of the specified crimes or U.S. Citizenship and Immigration Services (USCIS) ascertains through relevant background checks that the petitioner has been convicted, the petitioner will be required to submit certified copies of all court and police records showing the charges and dispositions for every conviction. This is required even if the petitioner's records were sealed or otherwise cleared.

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 filed two or more K-1 visa petitions at any time in the past, or previously had a K-1 visa petition approved within two years prior to the filing of the current petition, the petitioner must request a waiver. These limitations do not apply to petitioners for a K nonimmigrant visa for an alien spouse (K-3).

A discretionary waiver is available to waive the applicable time and/or numerical limitations if justification exists, except where the petitioner has a history of violent criminal offenses against a person or persons. Factors considered in the discretionary waiver include, but are not limited to:

- Whether unusual circumstances exist (e.g. death or incapacity of prior beneficiary(ies));
- Whether the petitioner appears to have a history of domestic violence;
- Whether it appears the petitioner has a pattern of filing multiple petitions for different beneficiaries at the same time, of filing and withdrawing petitions, or obtaining approvals of petitions every few years.

If the petitioner has a history of violent offenses, the filing limitations may not be waived unless extraordinary circumstances exist in the petitioner's case.

IMBRA requires that a waiver must be approved if the petitioner can establish that he or she:

- Was battered or subjected to extreme cruelty by his or her spouse, parent, or adult child at the time he or she committed the violent offense(s), and
  - Was not the primary perpetrator of violence in the relationship:
  - Was acting in self-defense;
  - Violated a protection order intended for his/her protection; or
  - Committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime committed and the petitioner having been battered or subjected to extreme cruelty.

The provisions of IMBRA apply to all petitions filed on or after March 6, 2006.

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 October 9, 2012. A review of the administrative record shows that this is the fifth Form I-129F that the petitioner has filed. On the instant Form I-129F, the petitioner indicated "yes" to being convicted of one of the enumerated offenses. The petitioner also indicated on the Form I-129F that his conviction was connected to his having been battered or subjected to extreme cruelty. On May 6, 2013, the director issued a request for evidence (RFE) of, among other things, compliance with IMBRA provisions regarding Form I-129F filing limitations and his criminal history. In response to the RFE, the petitioner submitted a Register of Actions from the State of Minnesota showing that he pled guilty to and was convicted of assault 5th Degree (Domestic).

On July 12, 2013, the director denied the petition, concluding that the petitioner was convicted of a violent offense and failed to submit a request for waiver with evidence establishing that extraordinary circumstances existed, pursuant to the provisions of IMBRA. The director also determined that the petitioner failed to submit original letters of intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status from the petitioner and the beneficiary and a passport-style photograph for the petitioner.

Analysis

On appeal, the petitioner submits original letters of intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status from the petitioner and the beneficiary and a passport-style photograph for himself. Accordingly this portion of the director's decision is withdrawn.

In his letter on appeal, the petitioner explains that he filed five fiancée petitions, including the instant Form I-129F. He states that the first petition for his previous girlfriend was approved but she decided not to come to the United States and the relationship ended. He subsequently filed a fiancée petition to bring another fiancée which was denied. He refiled for the same fiancée which was then approved and she entered the United States. The two were married on August 29, 2005 and later divorced on October 31, 2010. The petitioner then filed a fourth fiancée petition for his current fiancée, the beneficiary,

which was denied and the petitioner refiled the instant petition for the beneficiary. The petitioner also submits a letter from [redacted] a mental health practitioner.

Upon a full review of the record, including the evidence submitted on appeal, we find no error in the director's determination that the petitioner failed to demonstrate eligibility for a waiver of the numerical limitations pursuant to provisions in IMBRA. In his letter, the petitioner did not discuss the circumstance surrounding his conviction for domestic violence nor did he provide any probative detail demonstrating that he was battered or subjected to extreme cruelty by his former spouse at the time he committed domestic violence. The letter from mental health practitioner, [redacted] is brief and states only that the petitioner complied with the court ordered anger management classes, asked good questions, and actively participated in discussions. While we do not question [redacted] expertise, the letter does not provide any substantive information regarding extraordinary circumstances surrounding the petitioner's conviction that would establish eligibility for the waiver.

Conclusion

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.