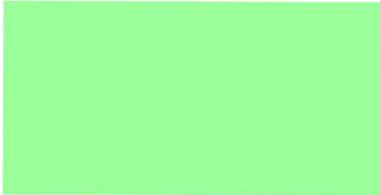


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U.S. Citizenship
and Immigration
Services

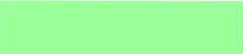


Date: **MAY 08 2014**

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, (“the director”) denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) denied a subsequent appeal. The matter is again before the AAO on motion to reopen. The motion will be granted. The previous decision of the AAO, dated January 20, 2014, will be affirmed and the petition will remain denied.

Section 214(d)(2)(A) of the Act prohibits the approval of a fiancé(e) petition where the petitioner has previously petitioned for two or more alien fiancé(e)s; or had a prior fiancé(e) petition approved that was filed less than two years ago. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, waive these limitations if justification exists for such a waiver. Section 214(d)(2)(B) of the Act, 8 U.S.C. § 1184(d)(2)(B). However, if the petitioner committed a violent offense, the filing limitations will not be waived by USCIS unless extraordinary circumstances exist in the petitioner’s case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion to reopen the petitioner provides a letter, dated February 4, 2014, from the Court Clerk of the Criminal Records of the Fourth Judicial District Court in Minneapolis, Minnesota. The letter states that no physical charging document exists for the petitioner’s domestic violence offense. The petitioner also submits previously submitted evidence: a letter, dated August 27, 2013, from [REDACTED] a mental health practitioner with [REDACTED]; and the Register of Actions from the State of Minnesota showing that he pled guilty to and was convicted of assault 5th Degree (Domestic) in violation of Minn.Stat. § 609.2242 (domestic assault).¹ On motion, the petitioner describes in his letter, dated February 10, 2014, the circumstances surrounding his conviction for domestic violence. The petitioner declares that in April 2001 he had an argument with his former wife, during which he “became very angry so I stood up walking toward her.” He stated that his son was present and jumped in between the petitioner and his wife to stop them from fighting. The petitioner stated that his wife felt threatened and was very upset and crying, and went outside. He recounted that he asked his son to get his mother back to the house or he would divorce her. The petitioner stated that his wife refused to return and a neighbor called the police. He declared that “there was no physical abuse but threat evidenced,” and that he was not battered or subjected to extreme cruelty by his former wife during the domestic violence incident.

The petitioner’s submission meets the requirements for a motion to reopen, and the motion will be granted. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

¹ Minn.Stat. § 609.2242 (domestic assault) states that a person is guilty of misdemeanor domestic assault if he or she “(1) commits an act with intent to cause fear in another of immediate bodily harm or death; or (2) intentionally inflicts or attempts to inflict bodily harm upon another [household member].”

Facts and Procedural History

As the facts and procedural history have been adequately documented in the previous decision of the AAO, only certain facts will be repeated as necessary here. The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Laos, as the fiancée of a United States citizen pursuant to § 101(a)(15)(K)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(i). The record shows that the petitioner filed the instant Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on October 9, 2012. This is the fifth Form I-129 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. The petitioner is consequently subject to the multiple filing bar at section 214(d)(2)(A)(i) of the Act. 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 in his case. 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, and a passport-style photograph for the petitioner.

On appeal, the AAO stated that the petitioner had filed five fiancée petitions, including the instant petition. The AAO stated that the petitioner was convicted of domestic violence and had indicated that his conviction was connected to his having been battered or subjected to extreme cruelty. The AAO stated that the petitioner failed to discuss the circumstances surrounding the commission of the crime or provide any probative detail demonstrating that he was battered or subjected to extreme cruelty by his former wife at the time he committed domestic violence. The AAO determined that the letter from [REDACTED] a mental health practitioner, failed to provide any substantive information regarding extraordinary circumstances surrounding the petitioner’s conviction that would establish eligibility for the waiver. The AAO concluded that the director made no error in her determination that the petitioner failed to demonstrate eligibility for a waiver of the numerical limitations under IMBRA. The AAO also stated that the petitioner submitted original statements establishing mutual intent to marry within 90 days of the beneficiary’s entry into the United States in K-1 status, and a passport-style photograph of the petitioner.

Applicable Law

The petitioner has previously filed four fiancée petitions for two different women and is subject to the multiple filing bar at section 214(d)(2)(A)(i) of the Act. The record shows that the petitioner was convicted of domestic violence. The filing limitations will therefore not be waived unless extraordinary circumstances exist in the petitioner’s case. On motion, the petitioner provides a personal statement giving details of the offense he committed. In his personal statement the petitioner does not express any remorse for his behavior towards his wife, and he seeks to mitigate his crime by stating that “there was no physical abuse.” The petitioner states that his former wife had not battered or subjected him to extreme cruelty at the time he committed domestic violence. To demonstrate rehabilitation the petitioner states that he completed an anger management program with Mr. [REDACTED] and offers a copy of a letter from Mr. [REDACTED]. This letter was previously submitted on

appeal, where we explained how the letter was deficient in demonstrating extraordinary circumstances surrounding the petitioner's conviction. Upon review of the relevant evidence, we find that the petitioner has not demonstrated that extraordinary circumstances exist in his case for a waiver of the filing limitations.

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 this burden. Accordingly, the previous decision of the AAO, dated January 10, 2014, will be affirmed and the petition will remain denied.

ORDER: The decision of the AAO, dated January 10, 2014, is affirmed. The petition remains denied.