



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: JUL 13 2015

FILE: [Redacted]

PETITION RECEIPT: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Nonimmigrant Petition for a Spouse Pursuant to § 101(a)(15)(K)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)(ii)

ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a U.S. citizen who seeks to classify the beneficiary, a native and citizen of Yemen, as the K-3 spouse of a U.S. citizen pursuant to section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(ii).

The director denied the petitioner's Form I-129F, Petition for Alien Fiancé(e) (Form I-129F), because the Form I-130, Petition for Alien Relative (Form I-130) that the petitioner had filed earlier on the beneficiary's behalf had been denied.

On appeal, the petitioner asserts that the Form I-130 was denied because he did not submit a marriage certificate, even though he previously had submitted a marriage certificate. He submits a copy of his marriage certificate and translation.

Applicable Law

Section 101(a)(15)(K) of the Act allows an alien married to a U.S. citizen to be admitted to the United States as a nonimmigrant if he or she:

(ii) has concluded a valid marriage with a citizen of the United States . . . who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa.

8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, . . . the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F.

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 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 a Form I-130 on behalf of the beneficiary on March 8, 2013. The petitioner subsequently also filed a Form I-129F on May 17, 2013.

The director denied the Form I-130 petition, finding that the petitioner had not submitted evidence of his claimed marriage to the beneficiary. On appeal, the petitioner submits a copy of their marriage certificate and an English-language translation.

Analysis

The instant Form I-129F petition may not be approved because petitioner must have an approved or pending Form I-130. 8 C.F.R. § 214.2(k)(7). Evidence in the record indicates that the Form I-130 petition that the petitioner filed on behalf of the beneficiary was denied on April 7, 2014. The record does not show that the petitioner filed a motion to reopen or reconsider the Form I-130 denial, or that he appealed the Form I-130 denial to the Board of Immigration Appeals. As a result, the beneficiary cannot benefit from Form I-129F. Therefore, the appeal will be dismissed and the petition will be denied.

In fiancé(e) 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.