



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 19 2015**

FILE: [REDACTED]
PETITION RECEIPT: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

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, Vermont 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.

The petitioner asserts he is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Pakistan, as the fiancée of a U.S. 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 Form I-129F, Petition for Alien Fiancé(e), pursuant to 8 C.F.R. § 103.2(b)(8)(ii), because the petitioner did not 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 his discretion may waive the requirement that the parties have previously 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 Form I-129F, including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

The statutory requirement of an in-person meeting between the petitioner and the beneficiary is further explained at 8 C.F.R. § 214.2(k)(2), which states, in pertinent part:

The petitioner shall establish to the satisfaction of the director that the petitioner and K-1 beneficiary have met in person within the two years immediately preceding the filing of

the petition. 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

Factual and Procedural History

The petitioner filed the Form I-129F on May 21, 2012, without supporting evidence. For this reason the director denied the petition on April 11, 2013. On appeal, the petitioner states that he has travelled to Pakistan five times. He submits as evidence an airline membership statement showing his travel activities to and from Pakistan between January 2, 2011, and January 3, 2013; and a Pakistani birth certificate for a child born on [REDACTED] to the petitioner and the beneficiary.

Analysis

The petitioner has submitted sufficient evidence of having met the beneficiary during the requisite period. The airline membership record and the birth certificate listing the petitioner and beneficiary as the parents of the child born on [REDACTED] cumulatively establish that the petitioner and the beneficiary met during the two-year period immediately preceding the Form I-129F filing date. The record, however, still lacks evidence of the petitioner's U.S. citizenship; statements from the petitioner and the beneficiary or other evidence of their intent to marry one another within 90 days of the beneficiary's admission into the United States in K-1 status; two Forms G-325A, Biographic Information, for the petitioner and the beneficiary; and passport-style photographs of the petitioner and the beneficiary.

In addition, the Form I-129F indicates that both the petitioner and the beneficiary were previously married to other individuals. However, the record does not include official documentation, such as divorce decrees or divorce certificates, to establish that the petitioner's and the beneficiary's previous marriages have been terminated.

According to *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972), both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. The petitioner has not established that he and the beneficiary were legally free to marry on May 21, 2012, the date he filed Form I-129F. Without this evidence, the petitioner and the beneficiary would not be legally able to conclude a valid marriage in the United States. Therefore, the beneficiary cannot be classified as a fiancée and is not eligible for the benefit sought.

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, USCIS may, in its discretion, deny the petition for lack of initial evidence. The petitioner did not submit the required documentation, and the beneficiary may not benefit from the instant petition. The petitioner bears the burden of proof in these proceedings.

Conclusion

As the petitioner still has not submitted all of the required initial evidence on appeal, the director's decision to deny the petition shall not be disturbed. 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. § 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.