U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: AUG 2 8 2015

FILE:
PETITION RECEIPT:

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:

NO REPRESENTATIVE OF RECORD

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, 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 is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Nigeria, 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 nonimmigrant visa petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii), because the petitioner did not submit sufficient evidence to establish eligibility. On appeal, the petitioner submits 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, Petition for Alien Fiancé(e) (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 . . . .

The regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances.

Factual and Procedural History

The petitioner filed the Form I-129F on March 14, 2013, with some, but not all, of the required evidence. On July 2, 2013, the director issued a request for evidence (RFE) showing that the petitioner and the beneficiary met each other in person during the two-year period between March 14, 2011, and March 14, 2013; and statements from the petitioner and the beneficiary of their intent to marry one another within 90 days of the beneficiary's admission to the United States in K-1 status. In addition, the director requested a Form G-325A, Biographic Information, for the beneficiary.

In response to the RFE, the petitioner submitted two affidavits from family members in Nigeria, describing a meeting between the petitioner and the beneficiary. The director deemed the affidavits insufficient to establish that the petitioner and the beneficiary met during the requisite period, noting that the affidavits were not supported by additional evidence.

On appeal, the petitioner states that in July 2012 he departed the United States for Nigeria, using an electronic ticket, and his passport was stamped on departure from, and entry into, both countries. He resubmits a copy of his U.S. passport page with a travel stamp, dated July 18, 2012, which the petitioner indicates, in a handwritten notation on the copy, is an arrival stamp issued in Nigeria; an Internet travel record indicating that a ticket was issued for the petitioner's departure on June 27, 2012, from New York on a flight to Nigeria, with a return flight from to New York on July 18, 2012; and copies of individual photographs of the petitioner and the beneficiary, which the petitioner states were taken in Nigeria by a friend.

Analysis

The documentation provided, including the affidavits, the passport travel stamps, the Internet travel record, and the copies of two separate individual photographs of the petitioner and the beneficiary, do not establish that they met during the requisite period, specifically in July 2012, as the petitioner asserts.

The petitioner states that in July 2012, he departed the United States for Nigeria, travelled with an electronic ticket, and his passport was stamped on departure and entry at both countries. The copy

he submits of his passport pages, however, shows only a July 18, 2012, entry stamp into There is no other evidence of travel on the passport. The petitioner does not explain this discrepancy. Moreover, the separate copies of photos of the petitioner and the beneficiary are undated and include no reference concerning their location. They do not establish that the petitioner and the beneficiary were at the same location at the same time or that they were together two years before the petitioner filed Form I-129F.

The record also still lacks evidence of the petitioner's and the beneficiary's intention to marry one another within 90 days of the beneficiary's admission into the United States in K-1 status. As noted above, the director requested that the petitioner provide his statement and that of the beneficiary, stating their intention to marry one another within 90 days of the beneficiary's admission into the United States in K-1 status. While such statements from the petitioner and the beneficiary are not specifically required, other evidence of their intent to marry one another within 90 days of the beneficiary's admission to the United States in K-1 status must be provided.

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.