



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JUL 23 2015**

FILE: [REDACTED]  
APPLICATION 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

INSTRUCTIONS:

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](http://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, 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 Pakistan, as the fiancée 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 nonimmigrant visa petition because the petitioner failed to establish that he and the beneficiary are legally able and actually willing to conclude a valid marriage in the United States within 90 days of the admission of the beneficiary into the United States because they are already married. On appeal, the petitioner submits additional evidence.

*Applicable Law*

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who 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 entry. . . .

Section 214(d) of the Act, 8 U.S.C. § 1184(d), 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 two 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. . . . [emphasis added].

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 the fiancé(e) petition with USCIS on April 21, 2014, without sufficient supporting evidence. For this reason, on May 22, 2014, the director issued a request for additional evidence. The petitioner submitted additional evidence. The director found the evidence insufficient to establish eligibility for the benefit sought and denied the petition accordingly. The petitioner has filed an appeal requesting a review of the director's decision.

*Analysis*

The record contains a declaration from the beneficiary indicating her intent to marry the petitioner within 90 days of her admission into the United States. The beneficiary indicated in the declaration that she and the petitioner were married on the telephone on [REDACTED] 2013 in accordance with Islamic law. The record also contains a marriage certificate from Pakistan indicating that the petitioner and the beneficiary were married on [REDACTED] 2013. The director found that as the petitioner and beneficiary were married at the time the petition was filed in 2014, they were not legally able to conclude a valid marriage within 90 days of the beneficiary's admission into the United States and denied the petition accordingly.

The record indicates that the petitioner and the beneficiary were married by telephone on [REDACTED] 2013, and there is no indication that they have met in person since the petitioner traveled to Pakistan in 2008. Pursuant to section 101(a)(35) of the Act, "the term 'spouse', 'wife', or 'husband' does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated." It appears from the record that the petitioner and beneficiary are not married for immigration purposes, and their 2013 marriage ceremony, a proxy marriage that has not subsequently been consummated, would not preclude the beneficiary from being classified as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Act. See 9 FAM 40.1 N1.3-2, ("a proxy marriage, that has not been subsequently consummated, does not create or confer the status of 'spouse' for immigration purposes pursuant to INA 101(a)(35). A party to an unconsummated proxy marriage may be processed as a nonimmigrant fiancé(e).")

Beyond the decision of the director, the applicant has not established that he and the beneficiary had met in person within two-year period immediately preceding the filing of the petition or demonstrate that he merits a favorable exercise of discretion to exempt him from such requirement. The applicant stated that he and the petitioner met in [REDACTED] Pakistan in 2008. This meeting falls outside the two-year period immediately preceding the filing of the application. There is no evidence in the record demonstrating that the petitioner and the beneficiary have met after the 2008 meeting in [REDACTED]. The applicant stated on the Form I-129F that he has been advised by his doctor not to move from [REDACTED] for health reasons. A February 20, 2014, note from the petitioner's doctor indicated that the petitioner has been under his care for hypertension, diabetes, and hyperlipidemia, that the petitioner needs medical follow-up, and that the petitioner is unable to travel outside of [REDACTED] and has been advised to stay in [REDACTED]. The letter does not provide any further detail about his condition and does not establish why the petitioner's condition renders him unable to travel. It does not establish the severity of his medical condition or otherwise support the assertion that traveling to Pakistan would result in extreme hardship to the petitioner.

The evidence provided by the petitioner does not meet the requirement specified under 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2) for an exemption from the meeting requirement. The statement from the petitioner's doctor does not satisfy the requirement for an exemption to the two-year meeting prior to filing the petition. The document does not establish that compliance would result in

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*NON-PRECEDENT DECISION*

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extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture, social culture or religious practice.

*Conclusion*

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner has not met that burden. As stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition.

**ORDER:** The appeal is dismissed. The petition remains denied.