



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 27 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 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, California Service Center, denied the petition. 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 Somalia, as the fiancé of a United States 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 petition for an alien fiancé(e) because the petitioner failed to establish that she is free to marry, that she and the beneficiary met in person during the two-year period immediately preceding the filing of the petition and that she had not been convicted by a court of law or court martial by a military tribunal for any of the crimes described at questions 2 and 3 of Part 3 on Form I-129F, Petition for Alien Fiancé(e).

#### *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 [her] discretion may waive the requirement that the parties have previously met in person. . . .

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 that the failure to establish that the petitioner and K-1 beneficiary have met within the required period or compliance with the requirement should be waived shall result in the denial of the petition.

#### *Facts and Procedural History*

The petitioner filed the Form I-129F with USCIS on March 20, 2014. On May 13, 2014, the director issued a request for additional evidence including divorce decrees or death certificates that terminated the previous marriages of the petitioner and beneficiary, evidence of intent to marry within 90 days of the beneficiary's admission and evidence that petitioner and beneficiary have met

within the two years preceding petition filing. In response, the petitioner submitted a printout of her flight itinerary for November 20, 2013 from Dubai to Mogadishu and for December 6, 2013 from Mogadishu to Dubai, a certified divorce decree of the beneficiary's first marriage<sup>1</sup> and intent to marry statements. As evidence of her divorce from her first marriage in Egypt, the applicant submitted an affidavit from an individual, [REDACTED] indicating that he was "present at the place the divorce took place and I witnessed this event." Regarding her second divorce, the applicant submitted a Certificate of Divorce from [REDACTED] of Washington.

On September 24, 2014, the director denied the Form I-129F, determining that the petitioner had failed to submit evidence to establish that she and the beneficiary had met during the two-year period immediately preceding the filing of the petition and failed to establish that she was free to marry. Specifically, no evidence was submitted establishing that the beneficiary was in Somalia at the same time the petitioner was there and that they had met in person and the documents regarding the petitioner's divorces were deemed insufficient.

On appeal, the applicant submits:

- A certified document from [REDACTED] Record and Licensing Services Division in [REDACTED] Washington, which indicates that a careful search of its marriage records had been conducted from November 23, 2004 to November 23, 2014, and that no record of marriage under the petitioner's name was found.
- A Divorce Certificate in the English language from the [REDACTED] indicating that on [REDACTED] 2004, the petitioner was divorced from her first spouse, [REDACTED].
- An Order of Dismissal dated [REDACTED] 2007, from [REDACTED] Superior Court of the State of Washington relating to an incident that occurred on [REDACTED] 2006.
- A printout of the beneficiary's flight itinerary for November 12, 2013 through December 29, 2013 to and from [REDACTED] (Somalia) and [REDACTED] (Ethiopia).

#### *Analysis*

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record contains flight information for the petitioner and beneficiary indicating that both individuals were in Somalia between November 20, 2013 and December 6, 2013. The record also contains a photograph of the beneficiary with the petitioner. However, the photograph of the beneficiary and the petitioner has little probative value as it has no identifying evidence to establish when it was taken. Further, the record establishes that the petitioner and beneficiary were both present in Somalia in 2013, but there is no assertion or any other evidence that they met during that

<sup>1</sup> The record contains a certified divorce decree of the beneficiary's second marriage.

time. As such, the petitioner has not established by a preponderance of the evidence that she and the beneficiary have met within the two-year period before the filing date of the petition as required under section 214(d)(1) of the Act. The petitioner has made no assertions claiming exemption from this requirement pursuant to 8 C.F.R. § 214.2(k)(2).

The petitioner has also not answered the Form I-129 questions regarding her criminal history questions 2 and 3 at Part 3 of the petition form or submitted any accompanying documents, as necessary. 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. 8 C.F.R. § 103.2(a)(1) provides, in part, that “[e]very benefit request ... must be executed and filed in accordance with the form instructions, ... and such instructions are incorporated into the regulations requiring its submission.” 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.

Further, the record reflects that the petitioner was previously married to [REDACTED] and [REDACTED]. Regarding her second marriage, the petitioner indicated on the Form G-325A, Biographic Information, that she married [REDACTED] on January 2007 in [REDACTED] Washington. The petitioner states that the marriage was terminated on [REDACTED] 2008, and submits a certificate of divorce from [REDACTED] of Washington and a certified document from the deputy auditor for [REDACTED] Record and Licensing Services Division indicating that no record of marriage was found in the petitioner’s name. The petitioner does not make any assertions concerning the submitted certified [REDACTED] record submitted, but it is noted that [REDACTED] is not the only county in the city of [REDACTED], the place of the petitioner’s second marriage. Further, the Form I-129F Instructions states that evidence of termination of a prior marriage may include a divorce decree, annulment or death certificate from a competent civil authority. As the certificate of divorce from [REDACTED] is not issued by a competent civil authority, it is not sufficient to establish the petitioner’s divorce from [REDACTED].

Regarding her first marriage, which the petitioner states was terminated on [REDACTED] 2004, the petitioner submits a divorce certificate and an affidavit from [REDACTED] who indicates that he was “present at the place the divorce took place and I witnessed this event.” The affidavit attesting to the affiant’s presence at the petitioner’s divorce is insufficient to establish the petitioner’s divorce from [REDACTED]. On appeal, the petitioner submits a divorce certificate from her first marriage, issued by the [REDACTED], 2004. The record does not contain an explanation concerning why this document was not previously submitted. The certificate is written in the English language, though issued by the [REDACTED], and the Egyptian flag printed on the certificate is not the current flag, but rather the previous Egyptian flag from 1953-1958. However, as the petitioner has not satisfied the statutory requirement of an in-person meeting between the petitioner and the beneficiary in the two year period before petition filing, failed to answer the Form I-129 questions concerning her criminal

history and failed to demonstrate that she is free to marry after her second marriage, we need not address the validity of the petitioner's divorce certificate from her first husband.

*Conclusion*

The appeal will be dismissed for the above stated reasons. 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. 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.