



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF D-V-

DATE: OCT. 22, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a citizen of the United States, seeks to classify the Beneficiary as a fiancé(e) of a United States citizen. *See* Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

On December 12, 2014, the Director denied the nonimmigrant visa petition because the Petitioner did not submit evidence that he and the Beneficiary had met within the 2 years immediately preceding the filing of the petition, or that he qualified for an exemption of this requirement.

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

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 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 Petitioner filed the Form I-129F on August 11, 2014, without sufficient supporting evidence. For this reason, on October 8, 2014, the Director issued a request for evidence (RFE) which requested documentation that the Beneficiary intended to marry the Petitioner within 90 days of admission into the United States, and that the Beneficiary and Petitioner had met in person within 2 years before the date of filing the petition. In response to the RFE, the Petitioner submitted a letter from the Beneficiary, and a statement that he is unable to meet the Beneficiary in the Democratic Republic of Congo (DRC) due to extreme hardship as he is politically active against the current government. In support of his statement he submitted a news article indicating that a protestor in Washington, District of Columbia, was beaten by a member of the Congolese President's entourage.

On December 12, 2014, the Director denied the petition finding that the Petitioner had not submitted evidence to establish that he and the Beneficiary had met between August 11, 2012, and August 11, 2014, as required under section 241(d) of the Act, or that he merited a waiver of the meeting requirement. Specifically, the Director found that there was no evidence that the Petitioner could not meet the Beneficiary in a third country. On appeal, the Petitioner states that he will meet his fiancée in a third country. On August 3, 2015, the Petitioner indicates that he met the Beneficiary in the Republic of Congo (Congo Republic) on July 8, 2015. In support of his statement he submits ticket stubs, copies of his Congo Republic visa, entry/exit stamps reflecting his travel to the Congo Republic from July 2, 2015 to July 24, 2015, and photographs of himself with the Beneficiary.<sup>1</sup>

The Petitioner has not submitted probative evidence demonstrating that he and the Beneficiary have met in person within the 2 year period immediately preceding the filing of the petition, from August 11, 2012, to August 11, 2014. Although the Petitioner submits documentation on appeal to demonstrate that he met the Beneficiary in 2015, this meeting falls outside the 2 year time period for the present Form I-129F. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit he is seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1).

Nor does the record contain sufficient evidence to show that the Petitioner is exempt from the 2 year meeting requirement. Pursuant to 8 C.F.R. § 214.2(k)(2), the Petitioner may be exempted from the requirement for a meeting with the Beneficiary if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the K-1 beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the

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<sup>1</sup> We note that the record does not contain evidence of the Beneficiary's travel from the DRC to the Congo Republic during corresponding dates.

(b)(6)

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required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The Petitioner's prior claim of extreme hardship due to his political activity against the DRC government did not account for his ability to meet the Beneficiary in a third country, which he claims he has now done. Thus, the Petitioner's claim that the couple's inability to meet within the required period was due to extreme hardship has diminished merit.

We therefore affirm that the Petitioner has not provided sufficient evidence to show that he merits a favorable exercise of discretion to exempt him from the requirement under section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). As discussed above, the couple's July 2015 meeting after filing the fiancée petition establishes that the filing of the petition was premature.

The record contains a certificate of customary law or traditional monogamy marriage reflecting that the Petitioner and Beneficiary were married in [REDACTED] DRC, on [REDACTED] 2014, after the filing of the Form I-129F. The certificate states that the traditional marriage was registered in accordance with DRC laws and all aspects of the marriage complied with custom and practices. We note that if this marriage is valid and legally recognized, the Beneficiary is no longer eligible for admission in K-1 status.

The Beneficiary may be eligible to apply for classification as a K-3 nonimmigrant spouse. If the Beneficiary seeks to be classified as a K-3 nonimmigrant, the regulations at 8 C.F.R. § 214.2(k)(7) require that a Form I-130, Petition for Alien Relative, be filed prior to the proper filing of a Form I-129F petition on behalf of the Beneficiary.

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.

Cite as *Matter of D-V-*, ID# 13858 (AAO Oct. 22, 2015)