



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 12754425

Date: MAY 11, 2021

Appeal of a California Service Center Decision

Form I-129F, Petition for Alien Fiancé(e)

The Petitioner, a U.S. citizen, seeks the Beneficiary's admission to the United States under the fiancé(e) visa classification. See Immigration and Nationality Act (the Act) section 101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i) (the "K-1" visa classification). A U.S. citizen may petition to bring a fiancé to the United States in K-1 status for marriage. The petitioner must establish, among other things, that the parties have previously met within two years before the date of filing the petition, have a bona fide intention to marry, and are willing and legally able to conclude a valid marriage in the United States within 90 days of the fiancée's admission. Section 214(d)(1) of the Act.

The Director of the California Service Center denied the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), concluding that the Petitioner had not established the Beneficiary's intent to marry the Petitioner within 90 days of his admission into the United States as required under Section 214(d)(1) of the Act. On appeal, the Petitioner submits new evidence, including a letter from the Petitioner and Beneficiary stating the Beneficiary's intention to marry the Petitioner within 90 days of his arrival.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.¹ The Administrative Appeals Office (AAO) reviews the questions in this matter de novo.²

The Petitioner has submitted additional evidence on appeal, including a letter signed by the Beneficiary stating his intention to marry the Petitioner within 90 days of his arrival, that appears material to her claim. Also, the Petitioner submitted additional photos, instant messages, updated affidavits, and a narrative on how she met the Beneficiary that provide more insight into the relationship between the Petitioner and Beneficiary. As such, we will remand the matter to the Director to consider this new evidence so that a determination can be made as to whether the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant have been met.

¹ Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

² See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

Moreover, 8 C.F.R. § 103.2(a)(1) states, in part:

Every form, benefit request or other document must be submitted to DHS and executed in accordance with the form instructions The form's instructions are hereby incorporated into the regulations requiring its submission.

The instructions on the Form 1-129F, Petition for Alien Fiancé(e), require the petitioner to:

You must submit one color passport-style photograph of yourself and one color passport-style photograph of the beneficiary taken within 30 days of filing this petition. The photos must have a white to off-white background, be printed on thin paper with a glossy finish, and be unmounted and unretouched.

The color passport-style photos must be 2 by 2 inches. The photos must be in color with full face, frontal view on a white to off-white background. Head height should measure 1 to 1 3/8 inches from top of hair to bottom of chin, and eye height is between 1 1/8 to 1 3/8 inches from bottom of photo. Your head must be bare unless you are wearing headwear as required by a religious denomination of which you are a member. Using a pencil or felt pen, lightly print your name and A-Number (if any) on the back of the photo.

We find no passport-style color photograph of the Beneficiary in the record of proceeding. The Petitioner therefore has not complied with the instructions on the form and has not submitted the required evidence, and for this additional reason she has not established eligibility for the benefit sought within the meaning of section 101(a)(15)(K) of the Act. As the Director has not notified the Petitioner previously of the Beneficiary's missing passport-style photo, the Director should afford the Petitioner the opportunity to address this deficiency.

In sum, we will remand the matter to the Director so that (1) the Petitioner can submit the required passport-style photograph of the Beneficiary; and (2) a determination can be made as to whether the remaining statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant have been met.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.