



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

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

In Re: 35358769

Date: DEC. 13, 2024

Appeal of California Service Center Decision

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

The Petitioner, a U.S. citizen, seeks classification of the Beneficiary as a “K-3” nonimmigrant, spouse of a U.S. citizen. The K-3 nonimmigrant visa classification allows the noncitizen spouse of a U.S. citizen who is the beneficiary of an immigrant visa petition (Form I-130, Petition for Alien Relative) to enter the United States to await the approval of the immigrant visa petition. Section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(k)(ii).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish her eligibility for the requested benefit. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Section 101(a)(15)(k)(ii) of the Act defines a K-3 nonimmigrant as the noncitizen beneficiary of an immigrant visa petition based on a valid marriage with a U.S. citizen, who seeks to enter the United States to await the approval of that visa petition. The implementing regulation requires that to be eligible for entry as a K-3 spouse, as defined in section 101(a)(15)(k)(ii) of the Act, the beneficiary must have a pending immigrant visa petition filed by their U.S. citizen spouse. 8 C.F.R. § 214.2(k)(7)

On August 31, 2023, the Petitioner filed the Form I-129F, Petition for Alien Fiancé(e), and a Form I-130, Petition for Alien Relative, on behalf of the Beneficiary (her husband). Because the Form I-130 was approved, the Director denied the Form I-129F petition, since the purpose of a K-3 nonimmigrant visa is to allow the Beneficiary to enter the United States to await the approval of the immigrant visa petition. As such, the Form I-129F is rendered moot upon approval of the Form I-130, immigrant visa petition.

On appeal, the Petitioner provides a statement asserting that consular delays in the processing of immigrant visa petitions necessitates her husband entering the U.S. in K-3 nonimmigrant visa status. The Petitioner seeks to “shorten” the length of time the Beneficiary must wait outside the United

States, because she has a high-risk pregnancy, and is experiencing other ailments that are interfering with her ability to work and care for herself. In addition, the Petitioner asserts her elderly parents and siblings are unable to provide her help. To corroborate her claims, the Petitioner provides letters from her colleague and from the physician providing care over her pregnancy. These letters corroborate the Petitioner's claims that her health has negatively impacted her work, and that her pregnancy is high risk and that her overall health status is compromised.

While we are sympathetic to the Petitioner's personal circumstances, the appeal does not identify a legal or factual error in the Director's determination. Furthermore, while we acknowledge the humanitarian concerns identified in the Petitioner's evidence, we are unable to waive the requirements of the law. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (noting that immigration regulations carry "the force and effect of law"). The Petitioner's statement and the corroborating letters do not establish a legal or factual basis for appealing the Director's determination. *See Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). *Id.* Moreover, we agree with the Director's determination that the approval of the Petitioner's Form I-130 renders the Form I-129F for a K-3 nonimmigrant classification on behalf of the Beneficiary, moot.

ORDER: The appeal is dismissed.