



U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 13 2006

EAC 05 074 53336

IN RE:

Petitioner:



Beneficiary:

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 The Philippines, as the fiancé 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 petition after determining that the petitioner had failed to establish that she and the beneficiary had personally met within the two-year period preceding the date of filing the petition, as required by section 214(d) of the Act. The director also found the petitioner to be ineligible for an exemption of the meeting requirement under 8 C.F.R. § 214.2(k)(2). *Decision of the Director*, dated May 24, 2005.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

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. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting 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 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 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 regulation at section 214.2 does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on January 18, 2005. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on January 18, 2003 and ended on January 18, 2005.

At the time of filing, the petitioner indicated that she and the beneficiary had not previously met but had established their relationship through telephone calls and correspondence. She stated that she was unable to travel to meet the beneficiary as a result of her parental responsibilities. In response to the director's request for evidence of a face-to-face meeting or proof that such a meeting would have resulted in extreme hardship or would have violated the customs of the beneficiary's culture or social practice, the petitioner submitted a statement indicating that she was unable to travel because of her three dependent children, her health and her employment. The petitioner stated that hospitalization and doctor appointments related to her asthma had exhausted her sick and annual leave. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

On appeal, the petitioner submits an unsigned June 2, 2005 letter from a doctor at the Camp Springs Medical Center for Asthma stating that, although the petitioner's health problems limited her ability to travel during 2003-2004, her asthma has been controlled and that she may now travel. The petitioner also provides a copy of her airline reservations for a July 2005 trip to The Philippines.

The AAO notes the petitioner's statements regarding her parental and employment obligations, as well as the health problems, that prevented her travel to The Philippines. However, neither the petitioner's personal commitments, nor her health concerns, provide a basis for determining that compliance with the meeting requirement of section 214(d) of the Act would have constituted an extreme hardship for her, as required for an exemption from that requirement.

Many individuals who wish to travel overseas before filing Form I-129Fs must find ways to meet personal obligations, including those involving family or employment, while they are away. Accordingly, the petitioner's childcare responsibilities and lack of sick/annual leave at her place of employment do not qualify as extreme hardship.

The letter submitted by the petitioner regarding her health during 2003-2004 fails to establish that she was unable to travel during the two years preceding her filing of the Form I-129F. As previously noted, the letter is not signed by the physician who is identified as having authored it. Accordingly, it will not be accepted as evidence of the petitioner's medical condition. Further, even if the letter did prove the petitioner was medically unfit to travel to The Philippines in 2003-2004, it would not provide a basis for an exemption.

While section 214(d) of the Act stipulates that a meeting between the petitioner and the beneficiary must occur during the two-year period immediately preceding the filing of the Form I-129F, it does not require the petitioner

travel to the beneficiary's country of residence. Instead, the petitioner and beneficiary could have satisfied the requirements of section 214(d) had the beneficiary traveled to the United States to meet the petitioner at any point during the specified period. The record, however, contains no evidence that indicates the petitioner and beneficiary considered or pursued such an option in an effort to comply with the meeting requirement.

Therefore, taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find that compliance with the meeting requirement would have resulted in extreme hardship to her or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the only circumstances that exempt a petitioner from the meeting requirement of section 214(d) of the Act. 8 C.F.R. § 214.2(k)(2).

On appeal, the petitioner indicates that she plans to travel to The Philippines in July 2005. Although the record does not include proof that such a trip occurred, the AAO notes that a July 2005 trip to The Philippines does not satisfy the meeting requirement of 214(d) of the Act, as it relates to the instant petition. To establish compliance with the meeting requirement, the petitioner was required to prove that she had met the beneficiary during the two-year period immediately preceding the filing of the Form I-129F – January 18, 2003 to January 18, 2005. A July 2005 meeting with the beneficiary cannot overcome the petitioner's failure to comply with the requirements of section 214(d) of the Act. Accordingly, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. If the petitioner and beneficiary have now met, she may file a new Form I-129F petition on his behalf so that a new two-year period in which the parties are required to have met will apply.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.