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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 05 213 50511

Office: VERMONT SERVICE CENTER

Date: JUN 29 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting 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 fiancée 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 acting director denied the petition after determining that the petitioner had failed to establish that he and the beneficiary had personally met within the two-year period preceding the filing of the petition, as required by section 214(d) of the Act. The acting director also found the petitioner to be ineligible for an exemption from the meeting requirement under the regulation at 8 C.F.R. § 214.2(k)(2). *Decision of the Acting Director*, dated October 26, 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 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 (CIS) on July 25, 2005. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on July 25, 2003 and ended on July 25, 2005.

At the time of filing, the petitioner indicated that he had not previously met the beneficiary and asked to be exempted from the meeting requirement as he did not wish to fly and suffered from a frequent urination problem. In response to the director's request for evidence, the petitioner submitted a letter from his physician who stated that traveling a long distance would be a hardship for the petitioner.

On appeal, the petitioner responds to the director's denial, which found that, as the petitioner's medical condition could be treated, it did not provide a basis for finding that compliance with the meeting requirement would have constituted an extreme hardship for him. The petitioner states that his doctor has advised him against taking the type of medication referred to in the director's denial. He also states that he has been informed by CIS customer service personnel that should he travel to The Philippines to meet the beneficiary, he will be required to file a new petition that is likely to be denied because of his age, which he finds to be discriminatory. The petitioner states that he is neither senile nor feeble and that he has established a loving relationship with the beneficiary over the Internet. He requests that the instant petition be granted.

The AAO notes the petitioner's statements on appeal and withdraws the director's finding related to potential treatments the petitioner could have sought for his medical condition. It accepts the statement from the petitioner's physician indicating that travel to The Philippines would pose a physical hardship on the petitioner. However, while the petitioner's medical condition may prevent him from traveling long distances, it does not establish that a meeting with the beneficiary during the specified period would have posed an extreme hardship for him. Section 214(d) of the Act does not require that the petitioner travel to the beneficiary's country of residence, only that the petitioner and beneficiary meet during the two-year period immediately preceding the filing of the Form I-129F. Accordingly, the meeting requirement in the instant case could have been satisfied by the beneficiary traveling to the United States or to a country near the United States to meet the petitioner, thus minimizing any physical hardship on him.

The record on appeal does not, however, demonstrate that the petitioner and the beneficiary considered or explored options for a meeting beyond the petitioner traveling to The Philippines. Therefore, the petitioner has failed to prove that a meeting with the beneficiary could not have occurred without posing an extreme hardship for him. As a result, the petitioner is not eligible for an exemption from the meeting requirement under the regulation at 8 C.F.R. § 214.2(k)(2).

The record does not address whether a meeting with the petitioner would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the other basis on which a petitioner may be exempted from the meeting requirement of section 214(d) of the Act. 8 C.F.R. § 214.2(k)(2)(2).

Accordingly, the petitioner has not established he is eligible for an exemption from the meeting requirement under either of the regulatory grounds provided at 8 C.F.R. § 214.2(k)(2). Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Should the petitioner and beneficiary meet, he may file a new Form I-129F petition on her behalf so that a new two-year period in which the parties are required to have met will apply. As in the instant case, a new Form I-129F petition may be approved only if the petitioner submits sufficient evidence to satisfy the requirements of section 214(d) of the Act, as noted above. There is no basis in law for a denial of the Form I-129F on the basis of a petitioner's age.

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.