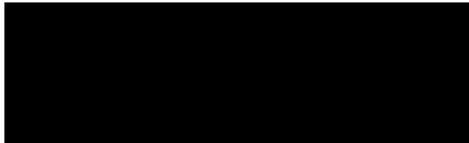


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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
WAC 07 044 52360

Office: CALIFORNIA SERVICE CENTER

Date:

NOV 27 2007

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 Director, California 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 director denied the petition after determining that the petitioner failed to establish that meeting the beneficiary within the two-year period immediately preceding the filing of the petition, as required under section 214(d) of the Act, would result in extreme hardship. *Decision of the Director*, dated April 17, 2007.

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 on December 4, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 4, 2004 and ended on December 4, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had not previously met and that he was applying for a hardship exemption because of lack of finances and fear of flying. *Form I-129F*, dated November 25, 2006. He states that he has three young children that he cares for full-time and would not be able to leave them to travel to [REDACTED] where the beneficiary is residing. *Attachment to Form I-129F*. He also states that he would not be able to afford to travel to [REDACTED] because he earned less than \$30,000 in 2005 and the beneficiary earns only \$310 per month. *Id.* He further explains that he has a fear of flying from a bad experience on a flight 10 years ago. *Id.*

On February 22, 2007, the Director requested additional documentation showing that a meeting between the petitioner and beneficiary during the two-year time period prior to filing would have resulted in extreme hardship. In response to the director's request for documentation, the petitioner submitted a letter and a note from his doctor. The applicant's doctor, [REDACTED] states that the petitioner has a history of degenerative disc disease of his lumbar spine and has intermittent exacerbations of back pain, which result in significant discomfort requiring narcotic pain medications and rest. *Letter from [REDACTED]*, dated March 26, 2007. [REDACTED] explains that if the petitioner were confined to an airplane seat for a prolonged period of time, it would very likely exacerbate his symptoms. *Id.* The petitioner states that he cannot travel to [REDACTED] because it is too expensive for him, he is afraid of flying and he is concerned about how a long flight would affect his medical condition. *Petitioner's Letter in Response to Request for Evidence*. He also explains that as a single father raising three young children in public school he needs to save all of his vacation days for when they are sick or his childcare service is unavailable. *Id.*

On appeal, the petitioner submits a third statement, which explains his efforts to find an alternative to flying to Dubai in order to meet the beneficiary. He states that he researched the possibility of flying the beneficiary to Canada, but if the beneficiary leaves [REDACTED] she will lose her employment and not be able to return. *Attachment to Form I-290B*. The petitioner explains that the beneficiary will then be forced to return to the Philippines without employment. *Id.*

The AAO recognizes that due to the petitioner's medical condition, it would be an extreme hardship for him to fly for a long period of time. However, the record does not contain supporting documentation to show that the beneficiary cannot meet the petitioner outside [REDACTED], at a location that would minimize his travel time. No documentation was provided to support the claims made by the petitioner concerning visa restrictions in the United Arab Emirates, where the beneficiary resides. In addition, the petitioner states that the beneficiary's work contract in the United Arab Emirates is for two years and that only after completing her contract would she be

free to take a vacation. *Attachment to Form I-290B*. Again, the petitioner has submitted no evidence to establish the terms of the beneficiary's employment contract. Thus, the record does not support a finding that a meeting between the petitioner and beneficiary would result in extreme hardship. The appeal will be dismissed.

The denial of the petition is without prejudice. After the petitioner and beneficiary have met, the petitioner may file a new I-129F petition on the beneficiary's behalf so that a new two-year meeting period 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.