

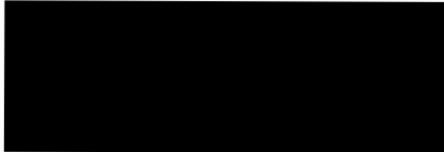
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U.S. Citizenship
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Services

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FILE: [REDACTED]
WAC 07 224 52250

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 12 2008**

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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

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 sustained.

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 he and the beneficiary met within the two-year period immediately preceding the filing of the petition, as required under section 214(d) of the Act or that such a meeting would have constituted an extreme hardship or violated the customs of the beneficiary's culture or social practice. *Decision of the Director*, dated February 13, 2008. The Director also found that the petitioner had not established that the beneficiary was unable to meet him in a third country. *Id.*

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 July 25, 2007. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 25, 2005 and ended on July 25, 2007.

At the time of filing, the petitioner indicated that he and the beneficiary had not previously met and that he is unable to travel due to a disability. *Form I-129*, dated July 24, 2007. He submitted a letter from his doctor, [REDACTED] and a confirmation of his disability benefits. In his letter, [REDACTED] states that the petitioner has been under his care for a degenerative condition of his spine resulting in chronic moderate-to-severe low back pain which limits his ability to remain seated for prolonged periods. He states that the petitioner would be unable to take a 15-hour flight. *Letter from [REDACTED]*, dated July 20, 2007.

On January 3, 2008, the Director requested additional documentation proving the petitioner's status as a U.S. citizen and showing that meeting the 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 copy of his birth certificate, showing he was born in the United States; the letter from his doctor, dated July 20, 2007; a statement of his disability benefits; a medical report from [REDACTED] and a statement of hardship. [REDACTED] states that the petitioner has spondylolisthesis, in between grade II and grade III and is unable to stand or walk more than several minutes before having to stoop and squat to reduce back pain. *Medical Report*, dated January 12, 2007. He states that the petitioner is unable to lift and he is unable to sit for prolonged periods of time. [REDACTED] diagnoses the petitioner with a highly unstable lumbar spine from pars defect with a high-grade spondylolysis and listhesis. *Id.* In his hardship letter, the petitioner states that he is requesting an extreme hardship waiver because of his medical disability and inability to travel. *Petitioner's Letter*, dated December 17, 2008.

On appeal, the petitioner states that the Director erred in assuming that he and the beneficiary could meet in a third country. He states that because of his medical condition it is impossible for him to travel to Canada or Mexico. He also states that he and the beneficiary explored the possibility of the beneficiary obtaining a visa to travel to Canada or Mexico and it was also not possible. *Form I-290B*, dated March 13, 2008.

The AAO recognizes that due to the petitioner's medical condition, it would be an extreme hardship for him to travel for even a short period of time. Thus, the AAO finds that the current record does support a finding that a meeting between the petitioner and beneficiary would result in extreme hardship. Therefore, the appeal will be sustained.

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 now met that burden.

ORDER: The appeal is sustained.