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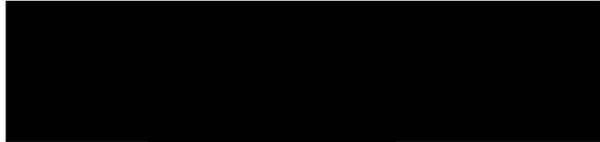
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
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U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: **DEC 30 2008**

IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
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 sustained. The petition will be approved.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Afghanistan, 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 because the petitioner did not establish that his failure to meet the beneficiary in person within the two years immediately preceding the filing of the petition was the result of extreme hardship. On appeal, counsel submits a brief, an article about the war in Afghanistan and copies of doctors' letters that were previously submitted.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry. . . .

Section 214(d) of the Act, 8 U.S.C. 1184(d), states in pertinent part that a fiancé(e) petition:

[s]hall 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

At the time of filing the petition, the petitioner's former counsel requested an exemption from the requirement that the petitioner and beneficiary must have met within the two years immediately preceding the filing of the petition. In a cover letter submitted with the I-129F Petition, counsel stated:

[The petitioner and the beneficiary] met four years ago when [the petitioner] was in Afghanistan, but [the petitioner] got very sick on that trip and does not want to return to Afghanistan for health reasons. He has Type 2 Diabetes Mellitus and Schizophrenia, and the conditions in Afghanistan aggravate his conditions.

The petitioner also submitted a letter from his Endocrinologist, [REDACTED] dated September 26, 2007. [REDACTED] stated:

[The petitioner's] type 2 diabetes mellitus is poorly controlled, and is complicated by retinopathy and glaucoma. He also has a history of schizophrenia and hypertension. Because of these medical problems it is very difficult for [the petitioner] to travel, especially on overseas flights. . . .

Finding that the initial evidence was insufficient proof of the hardship that the petitioner would endure by traveling to meet the beneficiary in person, the director requested additional evidence from the

petitioner in February 2008. The director acknowledged the letter from [REDACTED] but noted that [REDACTED] did not specifically state that travel for the petitioner was forbidden. The director requested a statement from a religious authority attesting to the practices of engagements and marriages or a statement from tribal leaders to establish that the meeting of the petitioner and the beneficiary would be a violation of the tribe's customs.

In response, the petitioner's former counsel reiterated that the petitioner's health problems prevent him from traveling. She submitted a second physician's letter from [REDACTED], dated March 10, 2008. [REDACTED] who is the petitioner's internist, described the petitioner's medical conditions and concluded, "I feel that traveling alone overseas will pose a serious threat to [the petitioner's] health."

When denying the petition on March 28, 2008, the director stated that the petitioner failed to establish that he qualified for an exception from the in person meeting requirement. The director noted that neither of the petitioner's physicians stated that it was forbidden for the petitioner to travel. The director stated that the petitioner and the beneficiary could meet either in the United States or a third country, and that such travel could include the petitioner's mother, who would be able to supervise and assist the petitioner.

On appeal, the petitioner's current counsel states that the director applied an incorrect legal standard when concluding that neither physician stated that travel for the petitioner was forbidden. Counsel states that there is no requirement that travel be forbidden, only that travel cause extreme hardship to the petitioner. Counsel states further that the petitioner's prior attorney erred when stating that the petitioner and the beneficiary had met previously. According to counsel, the petitioner and the beneficiary have never met; only the families have met because the beneficiary's family will not allow a meeting between the petitioner and the beneficiary prior to the "official acknowledgment ceremony." Counsel states that a meeting between the petitioner and the beneficiary would violate long-established customs and social practices of the beneficiary's family.

The AAO first addresses counsel's statements on appeal regarding the social customs of the beneficiary's family, which do not allow for a meeting between the petitioner and the beneficiary prior to a formal ceremony. The AAO notes that, although the director requested evidence in February 2008 that an in-person meeting between the petitioner and the beneficiary would violate long standing customs of the beneficiary's family, the petitioner did not present such evidence until the appeal. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of

the evidence submitted on appeal. Accordingly, the petitioner has not established that his failure to meet the beneficiary within the two years immediately preceding the filing of the petition was because such a meeting would have violated strict and long-established customs of the beneficiary's foreign culture.

The petitioner has established, however, that his health issues qualify him for an exemption. The petitioner submitted two letters from two physicians, each of whom attested to the petitioner's medical issues and stated that travel would pose a health risk to the petitioner. There is no requirement that travel be forbidden for the petitioner; only that travel results in extreme hardship. Here, the petitioner has established that travel to any country would cause him extreme hardship, considering his medical conditions. Accordingly, the AAO withdraws the director's decision.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.