



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date:

FEB 01 2008

WAC 07 066 52358

IN RE:

Petitioner:

[Redacted]

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:

[Redacted]

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 had failed to comply with the meeting requirement of section 214(d) of the Act or to establish that meeting the beneficiary within the two-year period immediately preceding the filing of the petition would have resulted in extreme hardship, or would have violated the customs of the beneficiary's culture or social practice. *Decision of the Director*, dated May 14, 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 January 4, 2007. Therefore, the petitioner and the beneficiary were required to have met during the period that began on January 4, 2005 and ended on January 4, 2007.

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 his medical condition. *Petitioner's Letter*, dated December 18, 2006. He submitted a letter from his doctor who stated that the petitioner should not travel by air. *Letter from [REDACTED] D. O.*, dated November 7, 2006.

On March 29, 2007, the Director requested additional documentation 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 declaration, additional medical documentation and copies of correspondence between himself and the beneficiary. On appeal, counsel submits additional documentation.

The record establishes that because of the petitioner's medical condition he cannot travel for long periods of time. The petitioner's doctor states that the petitioner has a long history of seizure disorder and severe orthopedic injuries from a motor vehicle accident that occurred in 1985. *Letter from [REDACTED]* dated May 4, 2007. [REDACTED] explains that because of the petitioner's severe head injury, his bone fractures received less attention and, as a result, his right hip fracture healed with his hip rotated ninety degrees outward, severely limiting his ability to walk. *Id.* In addition, [REDACTED] states that the petitioner's seizures are of the grand mal type of epilepsy and could be life-threatening if they occurred on an international flight. He states that the precipitators of seizures include physiological stress and sleep deprivation. He states further that because the petitioner suffers from osteoarthritis of his right hip, back, neck, feet, knees and ankles he would be at a very high risk for deep venous thrombosis during long periods of immobilization. For these reasons, [REDACTED] states, he has advised the petitioner against prolonged periods of travel. *Id.*

The AAO recognizes that the petitioner's medical condition would have prevented him from traveling to the Philippines during the specified period. However, the petitioner's inability to travel does not establish that compliance with the meeting requirement of section 214(d) of the Act would have constituted an extreme hardship. Although the Act requires the petitioner and beneficiary to meet, it does not require the petitioner to travel to the beneficiary's country of residence. In the present case the record does not demonstrate that the beneficiary, during the specified period, was unable to travel to the United States or a bordering country to meet the petitioner. The record includes a letter from the beneficiary stating that she knows of friends and a family member who have had problems obtaining visitor's visas to the United States, but that she has not attempted to apply herself. *Letter from Beneficiary*, dated June 7, 2007. Accordingly, the record does not support a finding that a meeting between the petitioner and beneficiary would have resulted in extreme hardship. Therefore, 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.