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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 14 2009

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting 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 fiancé(e) of a United States citizen pursuant to § 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 had failed to: (1) establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition; and (2) submit sufficient evidence that meeting the beneficiary in person would have been a hardship for him. On appeal, the petitioner provides a statement and a letter from his physician.

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 . . . .

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 U.S. Citizenship and Immigration Services (USCIS) on November 13, 2007. Therefore, the petitioner and beneficiary were required to have met between November 13, 2005 and November 13, 2007.

In denying the petition, the director noted that the petitioner had indicated "no" to the question about whether he and the beneficiary had met in person within the two-year period preceding the filing of the petition. The director stated that the petitioner claimed that a heart condition prevented him from flying; however, the petitioner did not present any evidence in support of that claim.

On appeal, the petitioner submits a July 8, 2008 letter from his physician [redacted], who states: "This is to certify that [the petitioner] is under my care for a cardiac condition. He is unable to fly because of severe panic attacks which may affect his cardiac condition."

The evidence regarding the petitioner's medical issues and how they impacted on his ability to travel during the requisite period lacks detail and substance. The AAO notes [redacted] opinion that the petitioner is unable to fly. Nevertheless, [redacted] letter is dated July 8, 2008, and the period of time that the petitioner was required to have met the beneficiary was sometime from November 13, 2005 through November 13, 2007. There is no evidence that the petitioner was affected by a cardiac condition as early as November 2005 or at any time during the required time period. When a petitioner is seeking an exemption from the requirement of an in-person meeting with a fiancé(e), a petitioner must do more than just state his medical condition. A petitioner must submit detailed and probative evidence of that medical condition. Such evidence must establish how long that medical condition has affected him, his prognosis for recovery, and information regarding how the medical condition affects not only his ability to travel but also his daily life. Without more details to substantiate the petitioner's claims that he could not travel during the requisite period because of health issues, the AAO cannot find that the petitioner should be exempt from the requirement of an in-person meeting between him and the beneficiary within the two-year period before the filing of the petition. Accordingly, the appeal is dismissed. The petition must be denied.

Beyond the decision of the director, the petition is also not approvable because the petitioner failed to submit the following documents in support of the I-129F Petition: (1) a Form G-325A Biographic Information Sheet for the petitioner; (2) two passport-style photographs of the petitioner; (3) two passport-style photographs of the beneficiary; and (4) statements or other evidence that establishes the petitioner's and beneficiary's intent to marry within 90 days of the beneficiary's arrival to the United States.

The denial of the petition is without prejudice to the filing of a new I-129F Petition on the beneficiary's behalf. If necessary, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that he should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his home.

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. The petition is denied.