U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 09 2009

IN RE: Petitioner:
Beneficiary: [redacted]

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, Vermont 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 personal statement; a letter dated February 26, 2009 from the payroll coordinator of Allied Waste Services; a letter dated March 5, 2009 from [redacted]; email and phone records; Congressional letters; and copies of documents already included in the record.

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 September 25, 2007. Therefore, the petitioner and the beneficiary were required to have met between September 25, 2005 and September 25, 2007.

In denying the petition, the director noted that the petitioner had presented letters from his employer, his sister, and his doctor. The director stated that the letter from the petitioner's employer indicates that the level of the petitioner's health allowed him to work more hours than average, that the petitioner's ability to work was not impeded by his medical condition, and that the petitioner has been unable to take an extended vacation, but it does not indicate that the petitioner is not allowed to take leave. The director stated further that while the letter from the petitioner's sister indicates that she depends upon the petitioner for her transportation, including taking her to get her medication and groceries, the petitioner had not established that other arrangements could not have been made during his temporary absence. The director also stated that the letter from the petitioner's doctor indicates that the petitioner was undergoing treatment for various medical conditions, and that the doctor advised the petitioner to maintain his medications and to have medical follow-ups, but the letter does not provide specifics regarding the frequency of the petitioner's doctor appointments, nor does it indicate that the petitioner is unable to travel.

On appeal, the petitioner states that he had traveled six times from 2003 to 2005 to the Philippines prior to the filing of the petition and that he and the beneficiary were waiting for her annulment to be finalized. The petitioner states further that when he filed the petition, he was only four months outside of the required time period, and that based upon his six visits to the Philippines and the new conditions of his travel restrictions, the petition should be approved.

The petitioner submits a letter dated February 26, 2009 from [redacted] of Allied Waste Services, who states, in part, that, from September 2005 to September 2007, Allied Waste Services did not have a controller "most of that time," and that the petitioner worked both as a staff accountant and as a controller and was thus "unable to take **more than 1-day or 2 days off at one time,**" and that during that same time period, the petitioner "lost 3 weeks of vacation time that he was not able to schedule off due to his workload." (Emphasis in the original.) [redacted] concludes: "[The petitioner] has stated that it takes 30 hours of travel time to the Philippines and again 30 hours coming back. So this is already more than two days, so he **would not have been able to make a trip [to] the** Philippines during this time." Although [redacted] indicates that the company did not have a controller "most of that time," referring to the required time period from September 25, 2005 and September 25, 2007, it remains unclear exactly how much of the time within the September 25, 2005 to September 25, 2007 timeframe that the petitioner was unable to take off more than one or two days at a time. Moreover, section 214(d) of the Act does not require that the petitioner travel to the beneficiary's home country for the requisite meeting. It is also noted that in his January 18, 2008 letter, the General Manager of Allied Waste Services states that the petitioner "has been unable to take an extended vacation due to his workload" because the business has "experienced a shortage of personnel and several position changes within the company over the past couple of years." As the required time period is between September 25, 2005 and September 25, 2007, at least part of the required time period

appears to fall prior to the "past couple of years" described by the General Manager in his January 18, 2008 letter. Moreover, as stated by the director in his decision, section 214(d) of the Act does not require that the meeting be of any specified duration, only that it occur within two years of the filing date of the petition.

The AAO acknowledges the petitioner's statement on appeal that his sister depends on him to take her to get her medicine and groceries. However, as stated by the director in his decision, the petitioner has not established that other arrangements could not have been made during his temporary absence. As the record indicates that the petitioner traveled to the Philippines six times from 2003 to 2005, it appears that he made other arrangements during those trips to provide for his sister.

The petitioner also submits a letter dated March 5, 2009, from [redacted], who states, in part, that due to the petitioner's treatment for diabetes mellitus, steatohepatitis, hyperlipidemia, and hypertension, the petitioner's numerous trips to the Philippines "would not have been advisable in case of potential medication side effects and blood sugar variations based on the potential of significant sleep disturbance, dietary [uncertainty] and physical adjustments to traveling over multiple time zones." While we do not question the expertise of [redacted], the petitioner did travel to the Philippines six times from 2003 to 2005, and the record does not indicate that he had any medical problems during those trips. In fact, the petitioner has submitted numerous photographs of himself engaged with the beneficiary in many tourist-related activities. Without more details to substantiate the petitioner's claims that he could not travel during the requisite period because of health and hardship issues, the AAO cannot find that the petitioner should be exempt from the requirement of an in-person meeting between him and the beneficiary. Accordingly, the appeal is dismissed. The petition must be denied.

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.