identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 26 2010

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Nigeria, 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 nonimmigrant visa petition because the petitioner failed to submit any supporting documentation. On appeal, the petitioner states that she was unable to visit the beneficiary during the two-year period immediately preceding the filing of the petition because, following the birth of her child by c-section, the beneficiary advised her to stay in the United States for proper follow-up, and, at the same time, she was taking a nursing program in school. As supporting documentation, the petitioner submits: evidence of her U.S. citizenship; her child's birth certificate reflecting a birth date of September 14, 2007, and listing the beneficiary as the father; original statements from the petitioner and the beneficiary or other evidence that establishes their mutual intent to marry within 90 days of the beneficiary's entry into the United States in K-1 status; passport-style color photographs for the petitioner and the beneficiary; completed G-325A, Biographic Information forms for the petitioner and the beneficiary; and photographs.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

> Subject to subsections (d) and (p) of section 214, an alien who -
>
> (i) 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 admission.

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), 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 2 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 March 23, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between March 23, 2007 and March 23, 2009.

When she filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether she and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner stated, in part, that she and the beneficiary met at school in Nigeria before she came to the United States.

On appeal, the petitioner submits the documentation listed above. The petition may not be approved, however, as the record does not contain evidence that she and the beneficiary personally met within the two-year period immediately preceding the filing of the petition.

As discussed above, the petitioner states on appeal that she was unable to visit the beneficiary during the two-year period immediately preceding the filing of the petition due to her studies and the birth of her baby. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would have resulted in hardship to the petitioner. It is noted that the petitioner's baby was born on September 14, 2007. The petitioner, however, has not explained why she was unable to visit the beneficiary prior to the birth of her baby and/or subsequent to her recovery from the baby's birth. As noted above, the petitioner and the beneficiary were required to have met in person between March 23, 2007 and March 23, 2009. Moreover, the record contains no supporting documentation, such as a letter from the petitioner's doctor, indicating that she was unable to travel during this time period.

The AAO also acknowledges the petitioner's diploma for her successful completion of a Practical Nursing Program on May 18, 2009, and the petitioner's assertion that she was unable to travel to Nigeria during the required time period due to her studies. It is noted, however, that § 214(d) of the Act does not require that the petitioner travel to the beneficiary's home country for the requisite meeting. The record on appeal does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Nigeria, including, but not limited to the beneficiary traveling to meet the petitioner in the United States or a bordering country. Moreover, the time commitment required for travel to a foreign country is a common requirement to those filing the Form I-129F petition and does not constitute extreme hardship to the petitioner. The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that

compliance with the meeting requirement would result in extreme hardship to the petitioner. Accordingly, the appeal is dismissed. The petition must be denied.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, she should ensure that she has documentary evidence of having met the beneficiary in person within the two years immediately preceding the filing of the petition, or sufficient evidence to establish that the requirement should be waived. If necessary, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that she 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 she may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to her 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.