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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: CALIFORNIA SERVICE CENTER Date: MAR 0 2 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, California 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 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 nonimmigrant visa petition because the record contains no evidence that the petitioner and the beneficiary personally met within the two-year period immediately preceding the filing of the petition or that the petitioner qualified for a waiver of that requirement. On appeal, the petitioner states that he was unable to visit the beneficiary during the two-year period immediately preceding the filing of the petition due to his physical condition, illness, disability, and limited financial resources. As supporting documentation, the petitioner submits letters from [redacted], and [redacted] dated May 4, 2009, May 6, 2009, and May 12, 2009, respectively.

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 July 30, 2007. Therefore, the petitioner and the beneficiary were required to have met in person between July 30, 2005 and July 30, 2007.

When he filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner stated that he has known the beneficiary since 1980, and that they had been college classmates for four years. The petitioner also stated that he and the beneficiary maintain constant communication via letters, email, and phone.

On August 14, 2008, the director issued an RFE, requesting that the petitioner submit evidence that he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition or, in the alternative, evidence to establish why the requirement of an in-person meeting should be waived.

In his August 27, 2008 response to the director's RFE, the petitioner stated that he and the beneficiary last saw each other in the Philippines in January 2005. The petitioner also stated that he attempted to visit the beneficiary on the following two occasions: in December 2005, when the beneficiary "fell gravely ill, which required her to have a lifesaving surgery"; and in December 2007, when he "suffered an acute cerebral stroke which left [him] with some degree of physical disability." The petitioner stated further that these two incidents left him and the beneficiary with many medical and hospital bills, and thus he had to cancel the two trips.

On September 16, 2008, the petitioner submitted additional documentation in response to the director's RFE, including the results of his CAT SCAN procedure completed on November 15, 2007, and consultation reports, both dated November 16, 2007, from [redacted] and [redacted] related to the petitioner's November 2007 illness.

The director denied the petition because the petitioner failed to establish that he and the beneficiary had met, as required under section 214(d) of the Act, or that he qualified for an exemption from this meeting requirement, pursuant to 8 C.F.R. § 214.2(k)(2).

As discussed above, the petitioner states on appeal that he was unable to visit the beneficiary during the two-year period immediately preceding the filing of the petition due to his physical condition, illness, disability, and limited financial resources. 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 December 2007 illness is subsequent to the two-year period immediately preceding the filing of the petition, between July 30, 2005 and July 30, 2007. Thus, the information pertaining to his illness is not relevant to these

proceedings. The petitioner submits letters from three doctors on appeal, the first of which is from [redacted], who states, in part, that he examined the petitioner on May 4, 2009, and due to the "brain stroke" suffered by the petitioner on November 15, 2007, it is his opinion that "to travel alone outside the confines of his regular daily activities" would cause the petitioner a significant amount of physical hardship. The second letter from [redacted] indicates that she evaluated the petitioner on May 6, 2009, and due to his "serious illness in November 2007," she advises "to postpone any travel plans until he feels physically more capable and upon recovery of the significant amount of muscle strength that he lost due to this illness." The third letter from [redacted] indicates that he evaluated the petitioner on May 12, 2009, and concludes that, due to the petitioner's stroke in November 2007, "he will have a significant amount of physical difficulty if he will engage in activities that will involve moderate to heavy use of his right extremities, particularly in traveling." Again, while we do not question the expertise of the petitioner's doctors, the petitioner's December 2007 illness is subsequent to the two-year period immediately preceding the filing of the petition, between July 30, 2005 and July 30, 2007, and thus is not relevant to these proceedings.

It is also noted 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 the Philippines, including, but not limited to the beneficiary traveling to meet the petitioner in the United States or a bordering country. Moreover, the financial 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, he should ensure that he 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 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.