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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

D6

[redacted]

Date: OCT 13 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
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 sustained. The petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, 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 establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition or that meeting the beneficiary in person would have been a hardship for him.

On appeal, counsel provides a statement from the petitioner and a letter from a clinical psychologist.

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, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person.. . .

Pursuant to 8 C.F.R. § 214.2(k)(2):

> As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner; or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social 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 January 31, 2011. Therefore, the petitioner and beneficiary were required to have met between January 31, 2009 and January 31, 2011. On the Form I-129F, 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 determined that although the petitioner claimed his medical condition prevented him from traveling to meet the beneficiary in person, the petitioner had not mentioned any reasons as to why the beneficiary would not be able to travel to see him. The director concluded that the petitioner had failed to establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition or that meeting the beneficiary in person would have been a hardship for him.

On appeal, counsel submits a letter from the petitioner and a copy of a letter from a licensed clinical psychologist, which was previously submitted below.

The petitioner asserts in his May 3, 2011 statement submitted on appeal that he served in the military during the Vietnam conflict and after he returned to the United States he was diagnosed by the Department of Veterans Affairs with having Post Traumatic Stress Disorder (PTSD). In a letter dated March 29, 2011, [redacted] of the Department of Veterans Affairs confirmed the petitioner's diagnosis with PTSD and noted that he is receiving disability benefits in relation to the diagnosis. [redacted] opined that since the petitioner has many difficult memories from his service in Vietnam, the petitioner's travel to Vietnam to visit the beneficiary would aggravate his PTSD symptoms. [redacted] further stated that the petitioner suffers from a significant phobia of air travel and has not been on an airplane since his return flight from Vietnam in 1968.

The director's basis of denial was erroneous. The regulatory provisions for an exemption of the meeting requirement as a result of hardship do not require that a petitioner establish a beneficiary's inability to travel to the United States. In fact, such a mandate would be contrary to the statutory provisions for a nonimmigrant visitor visa, which requires an alien to show that they are not an intending immigrant. *See* Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B). The issue here is whether the petitioner has submitted sufficient evidence to establish that compliance with the meeting requirement would cause him extreme hardship. The petitioner submitted a letter from a licensed clinical psychologist with the Department of Veterans Affairs, stating that the petitioner has PTSD as a result of his military service in Vietnam. [redacted] opined that the petitioner's travel to Vietnam to visit the beneficiary would aggravate his PTSD symptoms. [redacted] further stated that the petitioner suffers from a significant phobia of air travel and has not traveled on an airplane in over 40 years. There is no requirement that travel be impossible for the petitioner; only that travel results in extreme hardship. On appeal, the petitioner has established that compliance with the meeting requirement would cause him extreme hardship, considering his debilitating mental health condition. The relevant evidence also demonstrates that the petitioner merits a favorable exercise of discretion to waive the meeting requirement due to the extreme hardship compliance would cause the petitioner. Accordingly, the AAO withdraws the director's decision. The appeal is sustained, and the petition is approved.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.