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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

D6

Date: SEP 21 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 the Philippines, as the fiancé(e) of a United States citizen pursuant to section 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, the petitioner provides a statement 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, 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 September 17, 2010. Therefore, the petitioner and beneficiary were required to have met between September 17, 2008 and September 17, 2010. 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.

In denying the petition, the director noted that in response to a Notice of Intent to Deny (NOID), counsel submitted statements indicating that the petitioner's fear of small spaces and anxiety would cause hardship for him to travel to the Philippines. The director determined that although the petitioner claims his medical condition would render him unable to travel to meet the beneficiary in person, the petitioner had not mentioned any reasons at to why the beneficiary would not be able to travel to see him.

On appeal, counsel asserts that the director has ignored the severity of the petitioner's condition and the nature and symptoms of his disorder, agoraphobia. Counsel contends that the director's determination that the petitioner has not shown that the beneficiary would be unable to travel to meet him is not required by the regulations at 8 C.F.R. § 214.2(k)(2), which only requires extreme hardship to the petitioner. Counsel notes that it would be highly unlikely that the beneficiary could receive a nonimmigrant visitor visa for admission to the United States given her country of citizenship and residence.

Counsel submits copies of the petitioner's psychiatric records, reflecting that the petitioner has received treatment with medication and therapy from [redacted] M.D. for panic disorder with agoraphobia since 1996. Counsel provides an article from the Mayo Clinic entitled "Agoraphobia," explaining that, "[p]eople with agoraphobia often have a hard time feeling safe in any public place, especially where crowds gather. Commonly feared places and situations are elevators, sporting events, lines, bridges, public transportation, driving, shopping malls and airplanes."

Counsel also submits three letters attesting to the hardships the petitioner will suffer as a result of his condition if he travels. A letter from an internal medicine physician, [redacted] M.D., dated September 1, 2010, states that the petitioner "suffers anxiety, panic attacks and claustrophobia. He is not able to take long flights in airplanes." The petitioner's psychiatrist, Dr. [redacted] states in his January 20, 2010 letter, that the petitioner "is not able to fly long distances such as to the Philippines as he has a severe phobia of closed spaces and the trip would cause him severe discomfort." In a second letter, dated March 2, 2011, Dr. [redacted] states that the petitioner would be distressed if he were to fly to the Philippines. He notes that the petitioner previously had a panic attack on a bus due to the enclosed space and "there is not much that could be done to prevent this." Dr. [redacted] concludes that he has little doubt that the petitioner's illness "would worsen before, during and after the flight."

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. We find that he has satisfied this requirement. The petitioner submitted letters from two physicians, each of whom attested that the petitioner's chronic mental health conditions, panic disorder with agoraphobia, would cause him extreme distress if he traveled to the Philippines on an airplane. 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 conditions. 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.