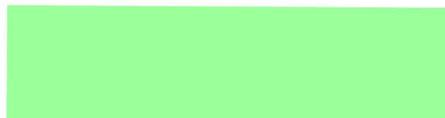


(b)(6)

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

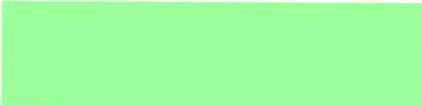


U.S. Citizenship
and Immigration
Services



Date: **JUL 15 2013** Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
 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)

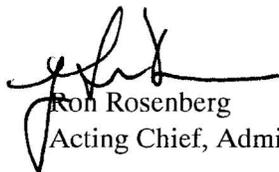
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg
Acting 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 fiancée 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 additional evidence.

Applicable Law

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.

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on July 19, 2012. Therefore, the petitioner and beneficiary were required to have met between July 19, 2010 and July 19, 2012. The petitioner initially submitted a statement in which he recounted that he first met the beneficiary in August 2007 while he was living in the Philippines. He stated that they thereafter resided together in the Philippines and their son was born in July 2008. The petitioner recounted that in February 2009 he had to return to his home in the United States for a follow-up appointment related to his medical treatment for cancer. He stated that he returned to the Philippines in July 2009, but had to travel to the United States again in March 2010 for medical reasons. The petitioner stated that he has since been unable to return to the Philippines because he is receiving continuing medical treatment in the United States.

In a November 29, 2012 Request for Evidence (RFE), the director informed the petitioner that he must either submit evidence of having met the beneficiary in person during the required time period or request a waiver of the meeting requirement. In response to the RFE, the petitioner submitted, *inter alia*, copies of: a Philippine Airlines boarding pass issued to him for travel to Cebu, the Philippines, on July 29, 2009; his U.S. passport visa pages showing his last departure date from the Philippines as March 9, 2010; and his flight itinerary for his July 29, 2009 travel to the Philippines.

In denying the petition, the director determined that the petitioner failed to establish that the statutorily required personal meeting between himself and the beneficiary occurred during the requisite time period, or that he is exempt from such a requirement. On appeal, the petitioner asserts that he was informed that he did not need to request a waiver of the meeting requirement because he previously shared a residence with the beneficiary and they have a child together. The petitioner submits: an unsigned letter from his physician, [REDACTED] copies of his son's passport, social security card and consular report of birth abroad; his telephone invoice showing a record of his phone calls to the Philippines; receipts of his remittances to the beneficiary; and letters from the beneficiary. On June 10, 2013, the AAO issued a RFE to the petitioner for the submission of an amended letter from [REDACTED] with the physician's signature and contact information. The petitioner timely responded to the RFE with a letter from his dentist, [REDACTED] and his medical records.

Analysis

A full review of the record shows that the petitioner has submitted sufficient evidence to establish that compliance with the meeting requirement would cause him extreme hardship. The petitioner stated in his initial letter that he has been unable to return to the Philippines since his departure from the country in March 2010 because he is receiving ongoing medical treatment in the United States. In his January 29, 2013 unsigned letter, [REDACTED] recounted that the petitioner had surgery for cancer of the head and neck over twelve years ago, which was followed by radiation therapy. He stated that he had to remove the petitioner's teeth and because of damage from the radiation therapy, the petitioner's jaw bone has not completely healed. [REDACTED] noted that the petitioner continues to receive medical treatments for his condition. He opined that it has not been possible for the petitioner to travel to the Philippines due to his medical conditions. In response to the RFE, the petitioner explains that he is unable to contact [REDACTED] for an amended letter because [REDACTED] is now retired. He states that [REDACTED] is his currently treating him and has access to his medical records.

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The petitioner notes that he is providing his medical records from the [REDACTED] [REDACTED] which show that he was recently diagnosed with Basel Cell Carcinoma of the neck and he has two other neck lesions. The petitioner states that he has upcoming surgery appointments for the removal of these lesions.

The letter from [REDACTED] dated June 17, 2013, is on the [REDACTED] [REDACTED] letterhead and it contains his contact information. [REDACTED] states that the petitioner developed a non-healing wound and a partial necrosis of the lower jaw bone in the years 2011 and 2012 after his tooth extractions. He recounts that the petitioner remained under the care of [REDACTED] for the treatment of this condition. [REDACTED] states that the petitioner is now under his medical care and is being monitored for the possible appearance of denture sores. He states that for these reasons, the petitioner has not been able to travel to a foreign country where access to medical care is not readily available. The medical records submitted by the petitioner reflect that he has recently been diagnosed with basal cell carcinoma of the neck and he has been scheduled for the removal of two neck lesions. The forgoing documentation establishes that the petitioner has several medical conditions for which he is receiving ongoing medical treatment in the United States. The petitioner has therefore demonstrated that compliance with the meeting requirement would cause him extreme hardship. 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 him. Accordingly, the petitioner has established that he merits an exemption from the meeting requirement.

Conclusion

Now that the petitioner has met all of the Form I-129F evidentiary requirements, the petition will be approved and the appeal will be sustained. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

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