



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



D6

FILE:



Office: VERMONT SERVICE CENTER

Date:

SEP 22 2005

EAC 03 229 53975

IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for Alien Fiancé(e) Pursuant to Section 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 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 after determining that the petitioner had not offered documentation evidencing that he and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated December 10, 2004.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states, in pertinent part, that a fiancé(e) petition:

. . . shall 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. . . .

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 at section 214.2 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 Citizenship and Immigration Services on August 11, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 11, 2001 and ended on August 11, 2003.

The petitioner contends that he filed the Form I-129F petition on December 19, 2001 as opposed to during August 2003. *Form I-290B*, dated December 30, 2004. The record contains a Form I-129F petition filed on the beneficiary's behalf by the petitioner on November 26, 2001 (EAC 02 047 56800). The AAO notes that the initial Form I-129F petition was denied by the director due to abandonment. The petitioner was notified of the director's decision regarding the initial Form I-129F petition in a letter, dated April 3, 2002.

In response to the director's request for evidence and additional information regarding the Form I-129F petition filed on August 11, 2003, the petitioner submitted a statement indicating that travel to the Philippines would impose danger on him as an American citizen.

On appeal, the petitioner asserts that he has provided all of the evidence required and that it was approved because Citizenship and Immigration Services (CIS) did not request it again. He contends that CIS has all of the records in the CIS record room. *Form I-290B*. In support of these assertions, the petitioner submits a copy of the decision of the director, dated December 10, 2004 including handwritten comments by the petitioner; a letter from the beneficiary, dated December 5, 2003; a letter from the petitioner, undated; copies of newspaper articles relating to kidnappings and murders occurring in the Philippines; a copy of a notice of separation with handwritten comments by the petitioner and a copy of the honorable discharge issued to the petitioner from the United States Navy.

Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between August 11, 2001 and August 11, 2003. Although section 214(d) of the Act requires the petitioner and the beneficiary to meet, it does not require the petitioner to travel to the beneficiary's home country. The petitioner states that he believes it is unsafe for him to travel to the Philippines. *See Letter from Marife T. Lastimosa*, dated December 5, 2003. *See also Letter from Joseph Yednak*, undated. He also contends that the beneficiary attempted to obtain a visitor visa to the United States and was rejected on two occasions. *See Petitioner's Comments to Decision of the Director*, dated December 10, 2004. The record on appeal, however, does not establish that the petitioner and the beneficiary are unable to meet in a third country in order to secure compliance with the meeting requirement.

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 or would violate

strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.