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FILE: [Redacted]
WAC 06 130 51159

Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 2007

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 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, 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 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 record did not establish that the petitioner and beneficiary had personally met within the two-year period immediately preceding the filing of the petition, as required by section 214(d) of the Act. He further determined that the record did not establish a basis on which to exempt the petitioner from this requirement. *Decision of the Director*, dated October 17, 2006.

Section 101(a)(15)(K) of the Immigration and Nationality Act (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 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 March 14, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 14, 2004 and ended on March 14, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had never met. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

On appeal, the petitioner states that he is unable to travel to the Philippines due to his poor health. The petitioner has multiple medical conditions that make it difficult for him to travel. *Statement from [REDACTED] M.D., Maui Veteran Affairs, Community Based Outpatient Clinic, Kahului, Hawaii*, dated June 13, 2005. The petitioner suffered a stroke in 1996 and should be considered physically disabled. *Id.*; *Statement from [REDACTED] MN, FNP-C, Dept. of Veterans Affairs, Maui Community Based Outpatient Clinic, Kahului, HI*, dated November 13, 2006. He is reliant on tube feedings via gastronomy tube and has significant impairment in his ability to ambulate independently and to communicate verbally. *Id.* He is confined to his immediate surroundings due to this disability. *Id.* While the AAO acknowledges these health conditions and finds that it would be an extreme hardship upon the petitioner to travel, it notes that the petitioner is not required to travel to meet his fiancée. The petitioner states that it is his understanding that for the beneficiary to visit Hawaii as a tourist, she needs to demonstrate that she has \$5000 savings in the bank, has a property deed, and has a round trip ticket. *Statement from the petitioner*, dated November 8, 2006. According to the petitioner, the beneficiary is unable to satisfy these requirements and thus cannot meet the petitioner in Hawaii. *Id.* The AAO acknowledges the petitioner's statements regarding the inability of the beneficiary to travel, however, it notes that the record fails to include documentation in support of the beneficiary's attempts to obtain permission to travel to the United States. Such documentation may include sworn statements by the beneficiary as well as responses from the U.S. Embassy in the Philippines regarding the beneficiary's ability to obtain a tourist visa to visit the United States. While the AAO finds that the petitioner has offered sufficient evidence to establish that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for him, the record does not demonstrate that the beneficiary is unable to travel to Hawaii to meet the petitioner. The record also does not show that such a meeting would have violated the customs of the beneficiary's culture or social practice. Additionally, the record does not contain the required Form G-325A for the applicant or two passport style photographs of the applicant and the beneficiary. The AAO also notes that the beneficiary improperly submitted the Form I-129F, not the applicant. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Once the petitioner and beneficiary have met, the applicant may file a new Form I-129F petition on the beneficiary's behalf so that a new two-year meeting period will apply.

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.