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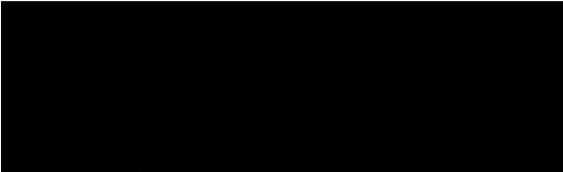
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 05 2009

IN RE:

Petitioner:



Beneficiary:

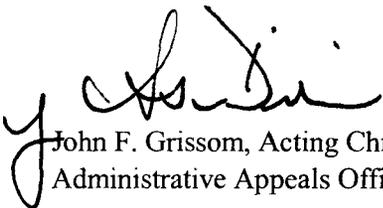
PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:



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.


John F. Grissom, 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 U.S. citizen who seeks to classify the beneficiary, a native and citizen of Iran, 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 did not establish that his failure to meet the beneficiary in person within the two years immediately preceding the filing of the petition was the result of extreme hardship. On appeal, counsel submits a brief and a doctor's letter.

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

At the time of filing the petition, the petitioner requested an exemption from the requirement that the petitioner and the beneficiary must have met within the two years immediately preceding the filing of the petition because of his muscular dystrophy. The petitioner submitted a letter from [REDACTED], Pulmonary and Internal Medicine, dated February 26, 2008, who stated that the petitioner has muscular dystrophy and is medically unfit to travel by air.

Finding that the initial evidence was insufficient proof of the hardship that the petitioner would endure by traveling to meet the beneficiary in person, the director issued a Notice of Intent to Deny (NOID) on July 16, 2008. In addition to finding the evidence to establish an exemption or waiver grounds insufficient, the director also found that the petitioner had not completely filled out the petition.

In response, the petitioner completed the omitted items on the petition and submitted a second letter from [REDACTED] dated July 28, 2008, who reiterated that the petitioner suffers from muscular dystrophy, and that making a trip to Iran to meet the beneficiary would be extremely difficult. [REDACTED] also described the petitioner, in part, as "a very capable individual who faces some difficult physical challenges in his daily activities."

When denying the petition on August 27, 2008, the director stated that the petitioner failed to establish that he qualified for an exception from the in-person meeting requirement. The director noted that the

medical certificate described the petitioner as “a very capable individual who faces some difficult physical challenges in his daily activities.”

On appeal, counsel states that the petitioner “suffers from multiple medical conditions which have left him confined to a motorized wheelchair and requiring a medical attendant.” Counsel submits a letter, dated October 24, 2008, from [REDACTED] General and Interventional Cardiology, who states that he and several other specialists have followed the petitioner since 1991. He also states, in part, as follows:

[The petitioner] has multiple medical conditions, including Dejerine-Sottas polyneuropathy and Guillain-Barre Syndrome, which have left him with quadraparesis and confined to a specialized motorized wheelchair. He requires attendant care. He has a gastrostomy tube for feeding and requires BiPAP ventilator support at night for respiratory insufficiency.

He is unable to take public transportation and requires a specialized wheelchair van for transportation to his appointments.

It would be an *extreme hardship* for him to travel outside of Northern California. Travel outside of the country would likely prove fatal to him. (Emphasis in the original.)

The petitioner has established that his health issues qualify him for an exemption. The petitioner submitted letters from two physicians, each of whom attested to the petitioner’s medical issues and stated that travel would pose a health risk to the petitioner. There is no requirement that travel be forbidden for the petitioner; only that travel results in extreme hardship. Here, the petitioner has established that travel to any country would cause him extreme hardship, considering his medical conditions. Accordingly, the AAO withdraws the director’s decision.

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.