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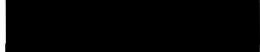


U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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)

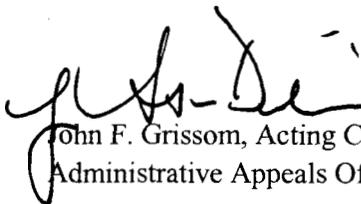
ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


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 dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Guinea, as the fiancé(e) of a United States citizen pursuant to § 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 she and the beneficiary met in person within the two years immediately preceding the filing of the petition. On appeal, the petitioner provides a statement and the following: an unsigned draft of the operative report of the petitioner's aortic valve replacement operation on January 27, 2000; unsigned operative reports of the petitioner's "Re-do aortic valve replacement" procedure performed on February 16, 2005; and copies of the petitioner's airline tickets issued on June 24, 2008 and August 28, 2008, respectively.

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

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 U.S. Citizenship and Immigration Services (USCIS) on January 22, 2008. Therefore, the petitioner and beneficiary were required to have met between January 22, 2006 and January 22, 2008.

In denying the petition, the director noted that the petitioner failed to establish that she and the beneficiary met in person within the two years immediately preceding the filing of the petition.

On appeal, the petitioner states that she had open-heart surgery in 2000 and 2005, and that she almost died during a trip to Guinea, West Africa after her 2005 surgery due to a lack of cardio-vascular physicians and facilities in that country. She also states that her doctor subsequently told her not to travel on long trips for at least three years, especially to Africa, because of her serious heart condition. She states further that her doctor authorized her to go see the beneficiary in the summer of 2008.

The evidence regarding the petitioner's medical issues and how they impacted on the petitioner's ability to travel lacks detail and substance. Although the petitioner claims that her doctor told her not to travel on long trips for at least three years, especially to Africa, because of her serious heart condition, the petitioner has not submitted any corroborating evidence, such as a letter from her physician, with a comprehensive description of the petitioner's medical issues and explaining how the petitioner's medical conditions impact on her daily living or ability to travel. The AAO notes further that, while the petitioner states that she visited the beneficiary in the summer of 2008, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Without more details to substantiate the petitioner's claims that she could not travel during the requisite period because of health issues, the AAO cannot find that the petitioner should be exempt from the requirement of an in-person meeting between her and the beneficiary. Accordingly, the appeal is dismissed. The petition must be denied.

Beyond the decision of the director, the beneficiary's Form G-325A, Biographic Information, has not been properly completed or signed. Nor does the record contain statements or other evidence that establish the intent of the petitioner and the beneficiary to marry within 90 days of the beneficiary's arrival to the United States. It is also noted that the record contains untranslated letters. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. For these additional reasons, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The denial of the petition is without prejudice to the filing of a new I-129F Petition on the beneficiary's behalf. If necessary, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that she should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or she may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to her home.

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. The petition is denied.