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U.S. Citizenship
and Immigration
Services

DC

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: FEB 27 2009

IN RE:

Petitioner:

Beneficiary:

[Redacted]

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)

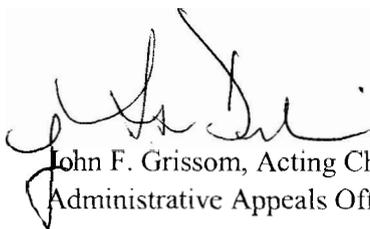
ON BEHALF OF PETITIONER:

[Redacted]

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 the Philippines, 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: (1) establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition; and (2) submit sufficient evidence that meeting the beneficiary in person would have been a hardship for him. On appeal, counsel submits a brief and the following documents: an affidavit from the petitioner; birth certificates for the petitioner's two minor children; a copy of the "Petitioner's Order to Show Cause Re Modification of Child Custody, Visitation (filed November 27, 2007)"; a copy of the "Order Approving Compromise and Release" issued by the State of California's Workers' Compensation Appeals Board, with the petitioner named as the applicant; the petitioner's benefit information from the Social Security Administration; medical reports for the petitioner's parents; the petitioner's mother's foreclosure notice; a letter from the petitioner's daughter's elementary school regarding the petitioner's participation in the "School Readiness Language Development Program from September 2007 to June 2008, and corresponding certificates; cell phone, email, prepaid phone, and money records pertaining to the petitioner and the beneficiary; a certification from an acquaintance of the beneficiary; and documents related to the petitioner's residence in the Philippines.

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 March 25, 2008. Therefore, the petitioner and the beneficiary were required to have met between March 25, 2006 and March 25, 2008.

When he filed the petition, the petitioner responded "yes" to the question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two years before the filing of the petition. The petitioner stated that he and the beneficiary met on March 17, 2006.

In an August 12, 2008 Request for Evidence (RFE), the director requested additional evidence, including a court disposition of the petitioner's conviction of a crime that falls under the Marriage Broker's Regulation Act (IMBRA), and primary evidence, such as airline ticket stubs and copies of passport pages, that he and the beneficiary had met in person within the two years immediately preceding the filing of the petition. In response, the petitioner submitted a certified copy of the electronic docket pertaining to the petitioner's conviction and copies of documents pertaining to his overseas travel.

The director denied the petition because the petitioner and beneficiary had not met in person during the required time period. On appeal, counsel, states, in part, that due to his disability and his numerous obligations, the petitioner was unable to visit with the beneficiary during the requisite time period. Counsel also states that the petitioner missed the required two-year time period by only eight days. As supporting documentation, counsel submits the above described documents.

The evidence regarding the petitioner's medical/disability issues and the petitioner's parents' medical issues, and how they impacted on the petitioner's ability to travel lacks detail and substance. The petitioner does not provide any letter from the petitioner's doctor with a comprehensive description of his medical/disability issues or explain how his medical/disability conditions impact on his daily living or ability to travel. When a petitioner is seeking an exemption from the requirement of an in-person meeting with a fiancé(e), a petitioner must do more than just state his medical condition and/or disability. A petitioner must submit detailed and probative evidence of that medical condition and/or disability. Such evidence must establish how long that medical condition has affected him, his prognosis for recovery, and information regarding how the medical condition affects not only his ability to travel but also his daily life. Nor does the petitioner provide any letters from the petitioner's parents' doctors with details to substantiate the petitioner's claims that he could not travel during the requisite period because he was his parents' healthcare provider. The AAO acknowledges the information regarding the petitioner's "bad divorce" and subsequent custody issues, the petitioner's mother's

foreclosure, and the petitioner's volunteer work at his children's school. It is noted that the petitioner was going through a divorce when he travelled to the Philippines on March 16, 2006, as he told the beneficiary when he met her that he "was in the middle of a bitter divorce." It is also noted that, as discussed above, the petitioner does not specify the date of the "physical trauma" that occurred at his work place. Thus, the petitioner has not established that his trip to the Philippines on March 16, 2006 was prior to the occurrence of his "physical trauma." Without more details to substantiate the petitioner's claims that he could not travel during the requisite period because of the issues described above, the AAO cannot find that the petitioner should be exempt from the requirement of an in-person meeting between him and the beneficiary. Accordingly, the appeal is dismissed. The petition must be denied.

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 he 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 he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his 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.