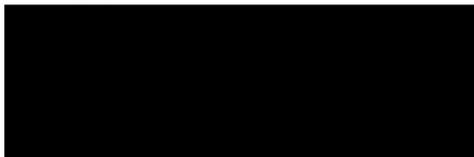




U.S. Citizenship
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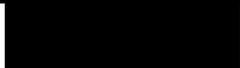
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JAN 25 2010

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).

Perry Rhew
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 naturalized U.S. citizen who seeks to classify the beneficiary, a native and citizen of Armenia, as the fiancé(e) of a U.S. 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 nonimmigrant visa petition because the record contains no evidence that the petitioner and the beneficiary had met in person within the two years immediately preceding the filing of the petition or that the petitioner qualified for a waiver of that requirement. On appeal, the petitioner provides a statement and additional evidence, including new letters from [REDACTED] and [REDACTED], and copies of previously submitted documentation.

Section 101(a)(15)(K)(i) of the Act defines "fiancé(e)" as:

Subject to subsections (d) and (p) of section 214, an alien who –

(i) 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 admission

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), 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 July 8, 2008. Therefore, the petitioner and the beneficiary were required to have met in person between July 8, 2006 and July 8, 2008.

When he filed the petition, the petitioner did not respond to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two years immediately preceding the filing of the petition. The petitioner indicated that he and the beneficiary had met "via video conferencing many times," and that he had met the beneficiary through his "old doctor" in Armenia. The petitioner also stated that because of medical reasons, he was unable to travel. As supporting documentation, the petitioner submitted a letter from [REDACTED], dated May 19, 2008, addressed to the U.S. Embassy in Yerevan, Armenia, stating that the petitioner suffers from "Elephantitis of his lower extremities." [REDACTED] states further: "It would appear to be medically necessary to expedite his trip to Armenia marriage [sic] and return to the U.S. so as not to jeopardize his health without appropriate medical treatment." The petitioner also submitted a letter from [REDACTED] dated June 17, 2008, stating that the petitioner has congenital lymphedema and "should not fly for any distance which will take more than 2 hours." [REDACTED] states further: "He also will need to remain near medical care, so that he can receive antibiotics and possible hospitalization, if he develops a leg infection." The petitioner also submitted copies of correspondence related to his intent to marry the beneficiary.

The director denied the petition because the petitioner failed to establish that he and the beneficiary had met, as required under section 214(d) of the Act, and that he qualified for an exemption from this meeting requirement, pursuant to 8 C.F.R. § 214.2(k)(2).

On appeal, the petitioner requests a waiver of the meeting requirement due to extreme hardship. The petitioner submits a letter from [REDACTED], dated January 22, 2009, who states:

[The petitioner] continues to be seen on a regular basis at this office. He is also seen regularly at the UCLA School of Medicine Vascular Surgery Center.

His Chronic Elephantitis of his lower extremities compromises his circulation in his lower extremities. He is completely unable to travel any significant distance. Such travel would compromise his health and could result in death.

The petitioner also submits a letter from [REDACTED] dated January 30, 2009, who states, in part, that, because of his congenital lymphedema, the petitioner "is completely unable to travel any significant distance." [REDACTED] concludes: "Traveling would totally compromise his health and can result in death."

While we do not question the expertise of [REDACTED] and [REDACTED], § 214(d) of the Act does not require that the petitioner travel to the beneficiary's home country for the requisite meeting. As such, the record must demonstrate that the petitioner and the beneficiary explored meeting in a country other

than Armenia, including the United States. The petitioner, however, has submitted no evidence that the beneficiary applied for a visa to visit another country. It is noted that, although the director discussed this issue in detail in her January 17, 2009 decision, the petitioner does not address it on appeal. In addition, the record contains a faxed correspondence, dated May 21, 2008, to [REDACTED] from the U.S. Embassy in Yerevan, Armenia, stating that the beneficiary "will be able to apply for a tourist visa, however she will have to meet all of the requirements to qualify for a tourist visa." Without more details to substantiate the petitioner's claim that he and the beneficiary could not meet in person during the requisite period because of hardship issues, 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. Should the petitioner wish to file a new I-129F Petition, he should ensure that he has documentary evidence of having met the beneficiary in person within the two years immediately preceding the filing of the petition, or sufficient evidence to establish that the requirement should be waived. 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.