



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date OCT 13 2010

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:

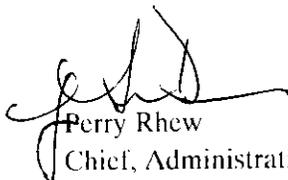
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 Mexico, 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 nonimmigrant visa petition because the record contains no evidence that the petitioner and the beneficiary personally met within the two-year period immediately preceding the filing of the petition or that the petitioner qualified for a waiver of that requirement. On appeal, the petitioner submits a letter and two gas bills dated March 16, 2010 and April 14, 2010, respectively.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act 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 2 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 February 16, 2010. Therefore, the petitioner and the beneficiary were required to have met in person between February 16, 2008 and February 16, 2010.

When he filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner stated that he began his relationship with the beneficiary after meeting her in a discotheque.

On April 12, 2010, the director issued a request for evidence (RFE), requesting that the petitioner submit evidence that he and the beneficiary personally met within the two-year period immediately preceding the filing of the petition or that he qualified for a waiver of that requirement.

In response to the director's RFE, the petitioner submitted the following documentation: a transaction history report for the time period from January 2008 through January 2010, from [REDACTED]; a copy of an [REDACTED] label addressed to the beneficiary at a Mexican address from the petitioner at an address in Phoenix, Arizona, dated December 17, 2009; a letter dated April 29, 2010, and translation, from the petitioner's pastor in Phoenix, Arizona; an undated letter from the petitioner's employer in North Carolina; a letter dated April 24, 2010, and translation, from the beneficiary's doctor in Mexico; a partial copy of the petitioner's federal income tax return for 2009, reflecting his address as: [REDACTED], and listing his filing status as "head of household," and listing the beneficiary as a "dependent" and her relationship to the petitioner as "other"; copies of the petitioner's 2009 W-2 wage and tax statement and 1099-G form, listing his address as: [REDACTED]; and photographs.

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, or that he qualified for an exemption from this meeting requirement, pursuant to 8 C.F.R. § 214.2(k)(2).

On appeal, the petitioner states, in part, that he previously submitted sufficient evidence to demonstrate that he and the beneficiary personally met within the two-year period immediately preceding the filing of the petition. The petitioner also states that he is submitting two gas bills in both his and the beneficiary's names as additional evidence that he and the beneficiary personally met within the two-year period immediately preceding the filing of the petition. It is noted here that the additional evidence submitted by the petitioner on appeal is dated after the February 16, 2010 filing of the petition. Specifically, the gas bills are dated March 16, 2010 and April 14, 2010, respectively. The petitioner, however, 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). In addition, the record contains unexplained inconsistencies. For example, the petitioner's Form G-325A, Biographic Information, indicates that from June 2009 to December 28, 2009, he resided at [REDACTED] which is inconsistent

with the information reflected on the report from [REDACTED] stating the petitioner's address during this same time period as: [REDACTED]. Moreover, the copies of the petitioner's 2009 W-2 wage and tax statement and 1099-G form also list the [REDACTED] address. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In addition, the statements from the petitioner's pastor that the petitioner plans to marry the beneficiary, and from the petitioner's employer that the petitioner "is trying to get [the beneficiary] legally to this country to get [married]," do not show that the petitioner and the beneficiary met within the required time period. Also, the photographs of the petitioner with the beneficiary are not film-dated, and thus they do not show that the petitioner and the beneficiary met within the required time period. In sum, the evidence of record does not establish that the petitioner and the beneficiary met as required. 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 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.