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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

86

DATE: **APR 20 2012** OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

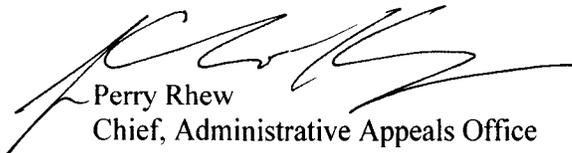
SELF-REPRESENTED

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, with a fee of \$630. 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 service center director (the director) denied the nonimmigrant visa petition and 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 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 on the basis of his determination that the petitioner failed to establish either that he met the beneficiary in person within the two-year period immediately preceding the filing of the petition, or that he is eligible for an exemption from that requirement. On appeal, the petitioner submits an argument made on the Form I-290B, Notice of Appeal or Motion and additional evidence.

Applicable Law

A “fiancé(e)” is defined at section 101(a)(15)(K) of the Act as someone who:

subject to subsections (d) and (p) of section 214, [is] 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:

shall 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, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

The statutory requirement for in-person meeting between the petitioner and the beneficiary is further explained at 8 C.F.R. § 214.2(k)(2), which states the following:

The petitioner shall establish to the satisfaction of the director that the petitioner and K-1 beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the K-1 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. Failure to establish that the petitioner and K-1 beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and K-1 beneficiary have met in person.

Pertinent Facts and Procedural History

The petitioner filed the instant petition on June 1, 2011. The director issued a subsequent request for additional evidence (RFE), and the petitioner submitted a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on December 21, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

Analysis

As the petition was filed on June 1, 2011, the petitioner is required by section 214(d)(1) of the Act and 8 C.F.R. § 214.2(k)(2) to demonstrate to the satisfaction of the director that he and the beneficiary personally met each other between June 1, 2009 and the date he filed the petition. The petitioner concedes that he and beneficiary did not personally meet during the relevant two-year timeframe and that they last saw one another on May 25, 2009. Instead, he requests exercise of the discretionary waiver from this requirement found at 8 C.F.R. § 214.2(k)(2).

The petitioner claims on appeal that it is unsafe for Americans to visit General Santos, the beneficiary's city of residence, because in the past year more than 100 people have been kidnapped there. He also notes that if the couple's last personal meeting had occurred only four days later, it would have taken place during the relevant two-year timeframe.

Upon review, the petitioner has failed to demonstrate that he is eligible for one of the discretionary waivers of the personal meeting requirement contained at 8 C.F.R. § 214.2(k)(2). Although the petitioner claims it is unsafe to visit the beneficiary's city, he submits no evidence to support his assertion. However, even if he and the beneficiary were unable to meet one another in the beneficiary's city, the petitioner has not demonstrated their inability to meet in another region of the Philippines or in a third country. He has therefore not established that he qualifies for the first discretionary waiver contained at 8 C.F.R. § 214.2(k)(2): that compliance would cause him extreme hardship. The petitioner does not assert, and the record does not demonstrate that he qualifies for the second discretionary waiver described at 8 C.F.R. § 214.2(k)(2): that meeting the beneficiary in

person within the relevant two-year period immediately preceding the filing of the petition would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

We acknowledge that the last meeting between the petitioner and beneficiary occurred only a few days before the petition was filed on June 1, 2011.¹ However, the only waivers of this temporal requirement are contained at 8 C.F.R. § 214.2(k)(2) and were described previously; the petitioner qualifies for neither.

Conclusion

On appeal, the petitioner has failed to overcome the director's ground for denying the petition and has not established either that he met the beneficiary in person within the two-year period of time immediately preceding the filing of the petition or that he qualifies for a discretionary waiver of that requirement. Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(K)(i) of the Act and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). He has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The petitioner notes on appeal that if the relevant two-year timeframe is considered to have ended on the date he mailed the petition rather than on the date it was received by U.S. Citizenship and Immigration Services (USCIS), the couple's last personal meeting occurred even closer to the commencement of that timeframe. However, even if we did factor the mailing date into account, the petition would still be denied because their last meeting would still have taken place outside the relevant timeframe. Furthermore, pursuant to section 214(d)(1) of the Act and 8 C.F.R. § 214.2(k)(2) the relevant two-year timeframe ends on the petition's filing date, and pursuant to 8 C.F.R. § 103.2(a)(7)(i) the petition's filing date is the date when the petition is received by USCIS as properly filed and not on the date it is mailed.