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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

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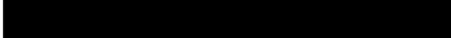
Date: **JAN 05 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

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:

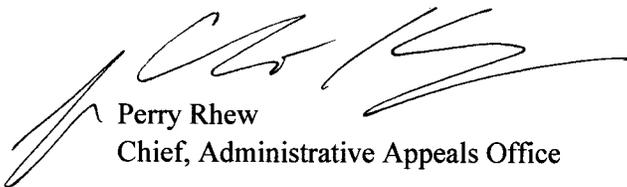
SELF-REPRESENTED

INSTRUCTIONS:

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 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 petition will be denied.

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; or (2) submit sufficient evidence that meeting the beneficiary in person would have been a hardship for him. On appeal, the petitioner provides a statement and additional evidence.

Applicable Law

Section 101(a)(15)(K) of the Act defines a "fiancé(e)" as, in pertinent part:

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

Pursuant to 8 C.F.R. § 214.2(k)(2):

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

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.

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on March 7, 2011. Therefore, the petitioner and beneficiary were required to have met between March 7, 2009 and March 7, 2011. On the Form I-129F, the petitioner indicated "yes" to the question about whether he and the beneficiary had met in person within the two-year period preceding the filing of the petition. However, the petitioner submitted an addendum to the Form I-129F, in which he stated that after he returned to the United States from the Philippines the beneficiary moved to Saudi Arabia to work for two years. He noted that they were not together for almost three years and continued their relationship long distance.

On May 31, 2011, the director issued a request for evidence (RFE) to the petitioner, requesting him to provide additional evidence demonstrating that compliance with the meeting requirement would cause him extreme hardship, or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. In response to the RFE, the petitioner submitted a statement in which he explained that the beneficiary worked in Saudi Arabia for two years as a nurse and he was employed in Los Angeles. He stated that he visited the beneficiary in the Philippines in May 2011. The petitioner did not further address the reason(s) he did not visit the beneficiary during the two-year period preceding the filing of the petition.

The petitioner submitted as additional evidence: a copy of the beneficiary's passport showing her travel to Saudi Arabia; employment verification and reference letters reflecting the beneficiary's employment in Saudi Arabia from March 2009 until March 2011; a copy of the petitioner's passport, boarding pass and flight itinerary, which show his travel to the Philippines in May 2011; a copy of the petitioner's previous passport and flight itinerary, which show his travel to the Philippines in April 2008; and photographs of the beneficiary and the petitioner.

On June 28, 2011, the director denied the petition, concluding that the petitioner did not establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition, or establish that meeting the beneficiary in person would have been a hardship for him.

Analysis

On appeal, the petitioner asserts that he experienced extreme hardship from 2009 until 2010 because he and the beneficiary were both busy working full-time. He reiterated that the beneficiary was hired on a two-year contract for employment as a full-time nurse in Saudi Arabia. The petitioner stated that he worked full-time in Los Angeles, was enrolled in school, and cared for his elderly grandfather who died in 2010. He noted that he visited the beneficiary in May 2011.

The petitioner submitted as additional evidence: a school enrollment verification letter stating that he has been a full-time student since February 24, 2009; an employment verification letter stating that he has been employed as a driver since May 18, 2009; the beneficiary's employment contract for her two-year employment in Saudi Arabia as a nurse; and an affidavit from the beneficiary. In her affidavit the beneficiary reiterated that she was assigned employment as a nurse in Saudi Arabia for the period of March 25, 2009 until March 25, 2011. She explained that her employment was for an uninterrupted

period of two years and she was never granted short-term or long-term vacation during this period. The beneficiary stated that she returned to the Philippines on March 21, 2011.

Upon a full review of the record, including the additional information provided on appeal, we find no error in the director's decision to deny the petition. The petitioner stated that he could not visit the beneficiary during the two-year requisite period between March 7, 2009 and March 7, 2011 because he was enrolled in school, worked full-time and cared for his elderly grandfather. However, he also stated that his grandfather died in 2010, which is prior to the expiration of the requisite period. The remaining hardship factors claimed by the petitioner were his school enrollment and full-time employment. However, these conditions did not preclude his visit to the Philippines in May 2011. While we recognize that the beneficiary was not residing in the Philippines during the requisite period, the petitioner has not stated, or submitted evidence to demonstrate, that meeting the beneficiary in Saudi Arabia would have been an extreme hardship for him. Furthermore, contrary to the beneficiary's assertions, her contract for employment in Saudi Arabia reflects that she was granted 21 days of vacation annually, indicating that she could have met the petitioner in the Philippines during the requisite period.

Conclusion

The statutorily required personal meeting between the petitioner and the beneficiary did not occur during the requisite time period and the petitioner has not demonstrated that he is eligible for a discretionary waiver of such a requirement. Consequently, the beneficiary may not benefit from the instant petition and it must remain denied. The appeal is, therefore, dismissed. As stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition now that the petitioner and the beneficiary have recently met in person.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition remains denied.