

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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: **SEP 12 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (the director), denied the nonimmigrant visa petition (Form I-129F), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain 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 failed to establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition, or that complying with the meeting requirement would have resulted in extreme hardship to him. On appeal, the petitioner submits a Form I-290B, Notice of Appeal with a statement, as well as a letter from his physician, Dr. [REDACTED]

Applicable Law

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:

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. . . .

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.

Factual and Procedural History

The petitioner filed the Form I-129F with U.S. Citizenship and Immigration Services (USCIS) on November 14, 2011. Therefore, the petitioner and beneficiary were required to have met between November 14, 2009 and November 14, 2011. In denying the petition, the director noted that the petitioner admitted that he and the beneficiary had not met in person within the two-year period preceding the filing of the petition, and that the petitioner was requesting a waiver of this requirement because he had a fear of heights and the beneficiary was not issued a nonimmigrant visa to visit him in the United States. The director stated that the petitioner's reasons for seeking a waiver were insufficient, as the petitioner and the beneficiary could meet in a location other than the United States that would not require air travel for the petitioner.

On appeal, the petitioner states that he suffered severe injuries from an accident years ago that left him unable to run due to poor balance from nerve damage, a shorter right leg, and two steel pins in his pelvis. The petitioner also submits a letter from [REDACTED] who states that the petitioner suffers from posttraumatic stress disorder due to his accident that "has left him with a bit of claustrophobia and that for a prolonged trip in an enclosed airplane would be contraindicated." [REDACTED] further asserts that the petitioner suffers from chronic obstructive pulmonary disease (COPD), that the petitioner had spontaneous pneumothoraces in the past, and that flying on a commercial jet for a prolonged period "is relatively contraindicated."

Analysis

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 record, we concur with the director's decision to deny the petition. The petitioner requests an exemption of the in-person meeting requirement due to his medical conditions that he states make it a hardship for him to travel; however, the record does not contain sufficient evidence in support of the petitioner's assertions.

When he initially submitted the Form I-129F petition, the petitioner stated that he and the beneficiary had not met in person because: (1) he did not like to be in public places with large crowds as a result of the injuries that he suffered after his accident; and (2) he is "scared to death of heights and flying and would be unable to get on a plane to travel abroad to meet [the beneficiary]." The petitioner also submitted a letter from [REDACTED] who stated only that the petitioner was unable to travel "due to posttraumatic stress disorder due to an accident he sustained" The petitioner's reasons for his inability to travel, which was based primarily upon his fears of heights and flying, were inconsistent with [REDACTED] assessment, and [REDACTED] failed to explain how the petitioner's posttraumatic stress disorder (PTSD) related to the petitioner's inability to travel. On

appeal, ██████ reiterates that the petitioner suffers from PTSD and states that, as a result, the petitioner is claustrophobic. ██████ also states, for the first time, that the petitioner suffers from COPD, which makes flying on a commercial airline “relatively contraindicated” due to the possibility that the petition may have a spontaneous pneumothoraces.

The record does not contain a consistent account of the medical reasons why travel would be a hardship to the petitioner. Initially, the petitioner never mentioned PTSD or COPD as the bases for being unable to travel; he cited his fears of heights, flying and large crowds. ██████ first letter, dated October 19, 2011, also mentioned only PTSD as the stated reason why the petitioner could not travel, and not COPD or any related conditions, which ██████ mentioned in his June 13, 2012 letter. Furthermore, ██████ medical assessment in his June 13, 2012 letter speaks only to the petitioner traveling by a commercial airline for a “prolonged” trip. ██████ does not discuss in probative detail the petitioner’s ability to travel in general, as there is no requirement that the in-person meeting take place in the beneficiary’s home country. While we do not question ██████ medical expertise, the evidence overall does not establish that an in-person meeting between the petitioner and the beneficiary during the qualifying period would have resulted in a hardship to him.

Conclusion

In proceedings for an alien fiancé(e) petition, the petitioner bears the burden of proof to establish 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). Here, that burden has not been met.

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