



U.S. Citizenship
and Immigration
Services

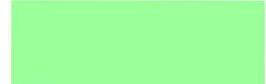
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Date: AUG 07 2013

Office: VERMONT SERVICE CENTER

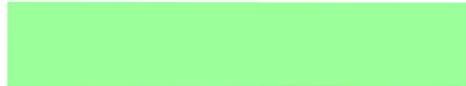
FILE:



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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, 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 Vietnam, as the fiancée 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 petitioner failed to establish that he and the beneficiary met in person during the two-year period immediately preceding the filing of the Petition for Alien Fiancé(e) (Form I-129F), or that he is exempt from such a requirement. On appeal, the petitioner submits additional evidence.

Applicable Law

Section 101(a)(15)(K) of the Act provides nonimmigrant classification to, in pertinent part:

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. . . .

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or does not demonstrate eligibility, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a Petition for Alien Fiancé(e) (Form I-129F), including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

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

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

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.

Factual and Procedural History

The petitioner filed the fiancé(e) petition with U.S. Citizenship and Immigration Services (USCIS) on September 22, 2011. Therefore, the petitioner and the beneficiary were required to have met in person between September 22, 2009 and September 22, 2011. When he filed the petition, the petitioner indicated that he has known the beneficiary since July 2009 and they frequently communicate. In a January 23, 2012 Request for Evidence (RFE), the director informed the petitioner that he must either submit evidence of having met the beneficiary in person during the requisite period or request a waiver of the meeting requirement. In response, the petitioner submitted the following relevant evidence: a flight itinerary reflecting that he traveled to Vietnam on September 24, 2011; his credit card statement showing transactions in Vietnam in October 2011; a copy of his entry visa for Vietnam; and a copy of an admission stamp from his passport, which shows that he entered Vietnam on September 25, 2011. In denying the petition, the director determined that the petitioner failed to establish that he and the beneficiary met in person during the two-year period immediately preceding the filing of the petition or that he is exempt from such a requirement.

On appeal, the petitioner asserts that he could not meet the beneficiary during the requisite period because of financial hardship. He states that he will make another trip to Vietnam on October 4, 2012. The petitioner provides a letter from his employer, [REDACTED] [REDACTED] stated that for the last two quarters of 2011 he was "short handed" and the petitioner had to cover maintenance operation supervision for the plant.

Analysis

The evidence provided by the petitioner does not establish that he would have suffered extreme hardship had he traveled to meet the beneficiary in Vietnam or another country during the requisite period. Although the petitioner asserts that he could not "get away from plant operations" and would have suffered financially had he left his position, the letter from his employer only states that the plant was short of staff during the last two quarters of 2011. The requisite period in this matter is between September 22, 2009 and September 22, 2011. The petitioner has not provided documentation to show that he would have suffered any type of hardship had he traveled to meet the beneficiary prior to the second half of 2011.

Although the petitioner has now provided evidence of his travel to Vietnam on September 24, 2011, the director's decision to deny the petition will not be withdrawn. As stated at section 214(d)(1) of the Act, the relevant time period in which the personal meeting between the petitioner and the beneficiary must occur is within two years before the filing date of the petition. Here, the couple met after the petition was filed. A petitioner 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 Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). While the evidence of the couple's meeting would be relevant to any new

fiancée petition that the petitioner may file for the beneficiary in the future, it has no relevance to whether the couple met during the period applicable to this petition, which was between September 22, 2009 and September 22, 2011.

Conclusion

The statutorily required personal meeting between the petitioner and the beneficiary did not occur during the required time period and the petitioner is not exempt from 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 met in person.

In fiancée visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.