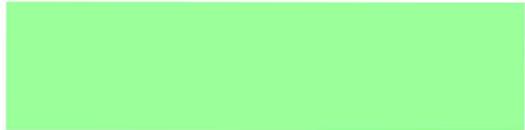




U.S. Citizenship
and Immigration
Services

(b)(6)

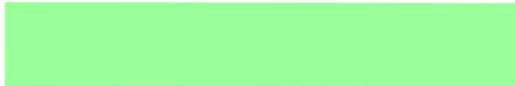


Date: **AUG 07 2013**

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:

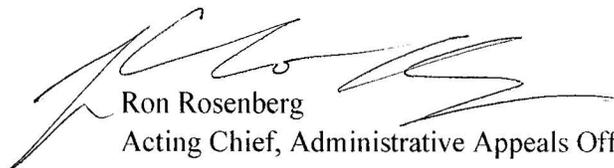
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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, California 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 the Philippines, 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 Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on April 23, 2012. Therefore, the petitioner and beneficiary were required to have met between April 23, 2010 and April 23, 2012. On the Form I-129F, the petitioner stated that he met the beneficiary on September 28, 2008 while he was stationed at a military base in Yokosuka, Japan. He stated that he and the beneficiary now have a child together. In an October 30, 2012 Request for Evidence (RFE), the director informed the petitioner that he must submit: evidence of his U.S. citizenship; a Form G-325A, Biographic Information, for the petitioner and the beneficiary; passport-style color photographs of the petitioner and the beneficiary; original statements from the petitioner and the beneficiary to establish their mutual intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status; and evidence of having met the beneficiary in person during the required time period, or a request for a waiver of the meeting requirement. In response to the RFE, the petitioner submitted: the requested Form G-325A, Biographic Information, for himself and the beneficiary; a declaration of nullity for the beneficiary's first marriage; and a divorce decree for the beneficiary's second marriage. 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 reiterates that he met the beneficiary in September 2008 while he was stationed in Japan. He states that the beneficiary was employed at the military base where he was stationed and they had a child together on November 18, 2010. The petitioner provides: his certificate of release or discharge from active duty; the orders for his duty in Japan; evidence that he added his son as a dependent of his benefits; and copies of photographs.

Analysis

The petitioner has not overcome the basis for denial. The requisite period applicable to this petition is between April 23, 2010 and April 23, 2012. The petitioner asserts that he was residing in Japan and in a relationship with the beneficiary during this period. The documentation provided by the petitioner shows that the petitioner was stationed in Japan from August 1998 until August 2012 and that he had a child born on November 18, 2010. However, the petitioner has not provided his son's birth certificate or any other evidence to show that the beneficiary, a native and citizen of the Philippines, is the mother of his child. Nor has the petitioner provided evidence of the beneficiary's residence or presence in Japan during the requisite period. The petitioner indicated that the submitted photographs are of his son and the beneficiary, but the photographs are not film-dated. Accordingly, the record does not establish that the petitioner met the beneficiary during the two-year period immediately preceding the filing of the petition.

In addition, the record still does not contain: proof of the petitioner's U.S. citizenship; and original

statements from the petitioner and the beneficiary to establish their mutual intent to marry within 90 days of the beneficiary's admission into the United States in K-1 status. The petition will also be denied for this additional lack of initial evidence.

Conclusion

As the petitioner still has not submitted all of the required initial evidence on appeal, the director's decision to deny the petition shall not be disturbed. In 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. sec 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.