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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

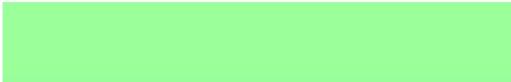


Date: **AUG 09 2013** Office: VERMONT SERVICE CENTER

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)

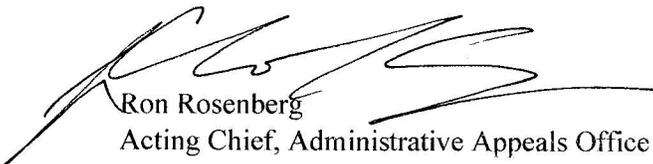
ON BEHALF OF PETITIONER:

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.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center (the director), denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Nigeria, as the fiancé 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 she 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 she is exempt from such a requirement. On appeal, the petitioner provides: a personal statement; evidence of her receipt of benefits from the Supplemental Nutrition Assistance (Food Stamp) Program; and an employment verification letter.

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

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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 March 27, 2012. Therefore, the petitioner and beneficiary were required to have met between March 27, 2010 and March 27, 2012. On the Form I-129F, the petitioner had indicated "no" to the question about whether she and the beneficiary had met in person within the two-year period preceding the filing of the petition. The petitioner stated that she has been unable to travel to Nigeria because she has multiple sclerosis. She stated that her neurologist advised that she avoid extreme heat because it could result in additional lesions on her brain as well as other symptoms. The petitioner noted that the beneficiary informed her that Nigeria is hot all year long. The petitioner submitted a letter from [REDACTED] dated March 14, 2012. [REDACTED] stated that the petitioner is under her care for treatment of multiple sclerosis, a chronic neurological disease of the central nervous system. She stated that the petitioner's symptoms include impaired vision and gait, abnormal reflexes, heat sensitivity and fatigue. [REDACTED] opined that travel to a warm or tropical area may impact the petitioner's disease and exacerbate her symptoms.

In an October 1, 2012 Request for Evidence (RFE), the director informed the petitioner that she must either submit evidence of having met the beneficiary in person during the required time period or additional evidence to request a waiver of the meeting requirement. The director noted that the beneficiary could have met the petitioner in the United States or a third country that does not have the same conditions as Nigeria. In response to the RFE, the petitioner provided, *inter alia*: a letter from [REDACTED]; her medical chart; a second letter from [REDACTED]; and a second personal statement. The petitioner reiterated in her second statement that she cannot travel to a country with extreme heat because of her multiple sclerosis. The petitioner stated that she learned that there are many countries that have very hot climates. She stated that the beneficiary is willing to travel to Brooklyn, New York after the waiver request is approved. [REDACTED] added in her second letter that the petitioner also suffers from heat intolerance. The medical chart submitted by the petitioner is dated September 16, 2010 and reflects that the petitioner was also diagnosed with diabetes mellitus. In his August 1, 2007 letter, [REDACTED] stated that the petitioner should continue to take medication for diabetes.

In denying the petition, the director stated that the petitioner had not demonstrated that her medical condition prevents the beneficiary from meeting her in the United States or a third country with a cooler climate. On appeal, the petitioner asserts that she is afraid of flying to another country with hot or cold conditions because of her multiple sclerosis. She states that her neurologist advised her to stay out of extreme heat and extreme cold because it can worsen her symptoms. She contends that since her medical condition is serious it is difficult for her to travel. She also asserts that because of her medical condition, she can only work part-time and her salary would not cover travel expenses. The petitioner

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notes that she receives government benefits to help with her financial needs. The petitioner submits a letter addressed to her from the New York Office of Temporary and Disability Assistance, dated October 2012, reflecting that she is receiving government benefits through the Supplemental Nutrition Assistance Program (SNAP). She also provides a letter from the manager of [REDACTED] dated January 4, 2013, which states that the petitioner is earning a bi-weekly salary of \$200.00 for 20 hours of weekly employment.

Analysis

The regulatory provisions for an exemption of the meeting requirement as a result of hardship do not require that a petitioner establish a beneficiary's inability to travel to the United States. In fact, such a mandate would be contrary to the statutory provisions for a nonimmigrant visitor visa, which requires an alien to show that they are not an intending immigrant. *See* Section 101(a)(15)(B) of the Act, 8 U.S.C. § 1101(a)(15)(B). The issue here is whether the petitioner has submitted sufficient evidence to establish that compliance with the meeting requirement would cause her extreme hardship. The petitioner asserts that travel to Nigeria or a third country would cause her extreme hardship due to her medical condition and related financial constraints. The record documents the petitioner's debilitating multiple sclerosis, her resultant inability to travel long distances or work full-time and her dependence on public assistance. The petitioner's neurologist, [REDACTED], stated that the petitioner's symptoms include impaired vision and gait, abnormal reflexes, heat sensitivity, heat intolerance and fatigue. The petitioner also provided evidence of her limited income and her receipt of public benefits through the New York Office of Temporary and Disability Assistance. There is no requirement that travel be impossible for the petitioner; only that travel results in extreme hardship. On appeal, the petitioner has established that compliance with the meeting requirement would cause her extreme hardship, considering her chronic, debilitating medical condition. The relevant evidence also demonstrates that the petitioner merits a favorable exercise of discretion to waive the meeting requirement due to the extreme hardship compliance would cause the petitioner.

Conclusion

Now that the petitioner has met all of the Form I-129F evidentiary requirements, the petition will be approved and the appeal will be sustained. 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. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.