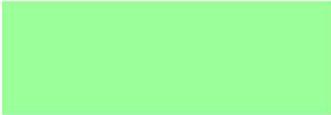




U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

Office: VERMONT SERVICE CENTER

FILE:

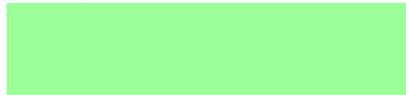


AUG 30 2013

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)

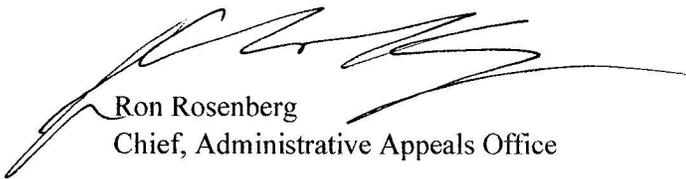
ON BEHALF OF PETITIONER:

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
Chief, Administrative Appeals Office

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 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 section 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 provides 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:

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 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.

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 December 19, 2011. Therefore, the petitioner and beneficiary were required to have met between December 19, 2009 and December 19, 2011. On the Form I-129F, the petitioner had indicated "no" to the question about whether he and the beneficiary had met in person within the two-year period preceding the filing of the petition. The petitioner referenced a letter he submitted from [REDACTED], dated November 14, 2011. [REDACTED] stated that the petitioner had several medical conditions that made an extended flight problematic, including arthritis, open heart surgery in March 2005 and left hip surgery in 2009. He stated that the petitioner takes heart medications, which thin blood and further place him at risk when flying. In an April 27, 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 required time period or additional evidence to request a waiver of the meeting requirement. In response to the RFE, the petitioner resubmitted the previous letter from [REDACTED]

In the September 21, 2012 denial notice, the director stated that the petitioner had not demonstrated that he would be unable to take trips of a short duration to meet the beneficiary in a third country, or that the beneficiary could not travel to the United States. The director also stated that the petitioner did not submit evidence to establish that meeting the beneficiary in person would violate strict and long-established customs in the beneficiary's culture or social practice. On appeal, the petitioner provided: letters from his physicians, [REDACTED] and [REDACTED]; his handicap parking tag; his medical records; and electronic mail correspondence from the beneficiary. On August 9, 2013, the AAO issued an RFE to the petitioner for two passport-style color photographs of the beneficiary. The petitioner timely responded to the RFE with the requested initial evidence.

Analysis

A full review of the evidence submitted below and on appeal shows that compliance with the meeting requirement would cause the petitioner extreme hardship. In his second letter, dated October 10, 2012, [REDACTED] added that the petitioner had new episodes of transient ischemic attacks and a recent coronary artery stenting procedure that prevent him from safely traveling even short distances by air. The petitioner's cardiologist, [REDACTED], stated in his October 11, 2012 letter that during the year, the petitioner received a coronary stent because his coronary artery disease had progressed. Several of the medical reports submitted by the petitioner relate to his previous heart catheterizations. The most recent medical report, dated October 2, 2012, stated that the petitioner is an 80-year-old male who was seen for hypertension, coronary artery disease, transient ischemic attack and osteoarthritis.

The electronic mail correspondence from the beneficiary is dated October 2, 2012, and stated that she applied for a visitor's visa to the United States on September 20, 2011 and was denied.

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 him extreme hardship. On appeal, he has satisfied this requirement. The petitioner has submitted letters from his physicians and medical reports that reflect that he suffers from hypertension, coronary artery disease, transient ischemic attacks and osteoarthritis. His physician, [REDACTED] stated that the petitioner's recent episodes of transient ischemic attacks and a coronary artery stenting procedure prevent him from safely traveling even short distances by air. 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 him extreme hardship, considering his numerous chronic, debilitating medical conditions. 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 appeal will be sustained and the petition will be approved. 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). Here, that burden has now been met.

ORDER: The appeal is sustained.