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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:

DEC 04 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:

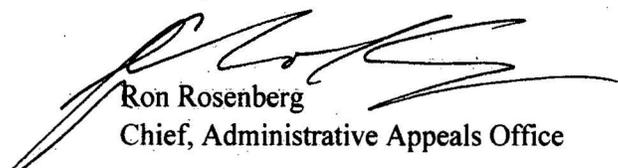
SELF-REPRESENTED

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
Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center ("the director"), and is now on appeal before the Administrative Appeals Office (AAO). 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 Thailand, as the fiancé(e) 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 petition because the petitioner had failed to establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition or that meeting the beneficiary in person would result in extreme hardship to the petitioner.

On appeal, the petitioner provides a statement and additional evidence.

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 [his] discretion may waive the requirement that the parties have previously met in person. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2):

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, as where marriages are traditionally arranged by the parties 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. Failure to establish that the petitioner and K-1 beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without

prejudice to the filing of a new petition once the petitioner and K-1 beneficiary have met in person.

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, 2012. Therefore, the petitioner and beneficiary were required to have met between December 19, 2010 and December 19, 2012. On the Form I-129F, the petitioner 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 submitted a statement on the Form I-129F, in which he explained that he and the beneficiary have not been able to meet in person because she was denied a visitor's visa to come to the United States and he was unable to travel to Thailand.

On May 15, 2013 the director issued a request for evidence (RFE) demonstrating compliance with, among other things, the meeting requirement or evidence that compliance would cause the petitioner extreme hardship, or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. In response to the RFE, the petitioner submitted a personal statement.

On July 12, 2013, the director denied the petition, concluding that the petitioner did not establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition, or establish his eligibility for a waiver of that requirement.

Analysis

On appeal, the petitioner reasserts that he could not meet with the beneficiary during the requisite period because he is a single father of two children who farms full-time and works at a factory full-time. He adds that his children are on prescription medicine for Attention Deficit Hyperactivity Disorder (ADHD) and require regular, monthly visits to their pediatrician. The petitioner also states that he takes care of his elderly mother who has health problems and does not drive. The petitioner further asserts that he could not meet the beneficiary during the requisite two-year period because she was denied a visa by the U.S. consulate without explanation. The petitioner submits as additional evidence: a personal statement; a letter from the petitioner's mother; the petitioner's paystub and earnings statement; receipts for farm equipment; evidence of the petitioner's children's medical conditions and prescription medicine; and the beneficiary's U.S. visa application denial notice dated August 16, 2013.

Upon a full review of the record, including the evidence submitted on appeal, we find no error in the director's decision to deny the petition. While the evidence submitted on appeal demonstrates that it would be difficult for the petitioner to travel, the record does not establish that meeting the beneficiary in Thailand or a third country would have caused him extreme hardship. In his statement submitted with the Form I-129F, the petitioner explained that he cares for his elderly mother and two children, ages 9 and 13 years at the time of filing. On appeal, the petitioner states that both of his children have been prescribed Vyvanse for their ADHD and submits a description of Vyvanse which states that it is a Schedule II controlled substance that requires monthly prescriptions since refills are

not allowed. The petitioner further states that a parent must be present for the continued use of this medication. However, the medical documents submitted do not state this requirement and there is no evidence to indicate that the petitioner's children require daily care that would have prevented him from briefly travelling during a time when neither child had their monthly appointment.

the petitioner's mother, states in her letter that she helps her son take care of the children but that she cannot drive and relies on the petitioner to take her grocery shopping and to doctor's appointments. She does not state the frequency of her medical appointments nor does she specify any serious conditions that require daily medical attention. Additionally, apart from stating that the closest neighbor is over a mile away, Ms. does not provide any detailed explanation about, for example, other family members or close friends who could have provided temporary assistance during a brief absence by the petitioner. Likewise, the petitioner does not provide any explanation about his inability to arrange temporary, alternative care for his children and mother. Accordingly, a preponderance of the evidence does not show that meeting the beneficiary in person would have caused the petitioner extreme hardship.

The petitioner also stated in his supplement statement submitted with the Form I-129F that the beneficiary applied for and was denied a visitor's visa to the United States prior to filing the fiancée petition. On appeal, he submits a denial notice that is dated after the requisite two-year period between December 19, 2010 and December 19, 2012. He does not submit any supporting documentation of the beneficiary's inability to leave Thailand during this time or of her inability to travel to meet the petitioner in a third country due to, for example, her employment or other personal circumstances.

Conclusion

The statutorily required personal meeting between the petitioner and the beneficiary did not occur during the requisite time period and the petitioner has not demonstrated that he is eligible for a discretionary waiver of such a requirement. Consequently, the beneficiary may not benefit from the instant petition and it must remain denied. The appeal will, therefore, be dismissed.

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. 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. The petition remains denied.