

(b)(6)

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 30 2013** Office: CALIFORNIA SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

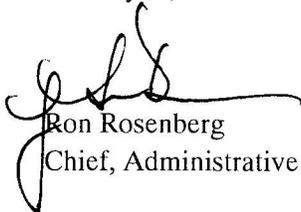
SELF-REPRESENTED

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 Director, California 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 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 fiancé 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: (1) establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition; or (2) submit sufficient evidence that meeting the beneficiary in person would have been a hardship for him.

On appeal, the petitioner submits 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. . . .

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, as where marriages are traditionally arranged by the parents 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 September 1, 2012. Therefore, the petitioner and beneficiary were required to have met between September 1, 2010 and September 1, 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. On April 23, 2013 the director issued a request for evidence (RFE) of compliance with 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 two personal statements, medical reports, a copy of U.S. Department of State (DOS) travel warning to Mindanao, Philippines, photographs of the petitioner with friends, and photographs of the beneficiary with her family. The petitioner explained that due to vertigo, his doctor recommended that he not travel. The petitioner also explained that he had been unable to visit the beneficiary because both are deaf and it is both unsafe and difficult for them to travel.

On August 7, 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 and did not establish his eligibility for a waiver.

Analysis

On appeal, the petitioner submits evidence that he traveled to the Philippines to meet the beneficiary in August of 2013. The evidence includes an airline passenger receipt issued on August 13, 2013; an airline travel itinerary showing round trip travel from Las Vegas, Nevada to the Philippines on August 26, 2013 to September 4, 2013; and photographs of the petitioner and the beneficiary together. Therefore, the record reflects that the couple met in person after the petition was filed. The petitioner does not submit additional evidence regarding his request to waive the in-person meeting during the requisite two-year period.

A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A 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 1, 2010 and September 1, 2012.

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. In his statements submitted in response to the RFE, the

petitioner stated that as a deaf person, it is unsafe for him to travel outside of the United States and that the Philippines is a dangerous location for Americans to travel. He also stated that he suffers from the medical condition vertigo and that his doctor advised him not to travel by air. Although the DOS travel warning indicated dangerous conditions in May of 2013 when the petitioner accessed its site online, this alone was insufficient evidence to demonstrate that the dangerous conditions existed throughout the two-year period immediately preceding the petitioner's Form I-129F filing. Additionally, the petitioner did not submit any documentation regarding his or the beneficiary's inability to travel so that they could meet elsewhere. Likewise, the medical reports submitted by the petitioner were dated October 2011 to December 2011. The last report, dated December 18, 2011, stated that the petitioner's symptoms of dizziness and nausea began in October of 2011. It does not contain probative information establishing that meeting the beneficiary in the Philippines or a third country would have been an extreme hardship during the time period between September 1, 2010 and September 1, 2012, nor did it conclude that air travel was not an option for the petitioner.

Further, the statements of the petitioner were insufficient to establish that meeting during the requisite period would have caused the petitioner extreme hardship. He did not provide any probative information regarding his or the beneficiary's inability to travel or otherwise establish his eligibility for an exemption to the in-person meeting requirement. While the record shows that the beneficiary and the petitioner met in the Philippines in August of 2013, it lacks sufficient evidence that the petitioner merits a favorable exercise of discretion to exempt him from the in-person meeting requirement during the requisite two-year period pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2).

Conclusion

The statutorily required personal meeting between the petitioner and the beneficiary did not occur from September 1, 2010 and September 1, 2012 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 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 as the petitioner and the beneficiary have recently 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. 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.