



U.S. Citizenship
and Immigration
Services

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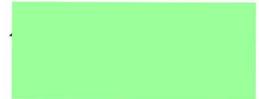


Date:

JUN 10 2013

Office: CALIFORNIA SERVICE CENTER

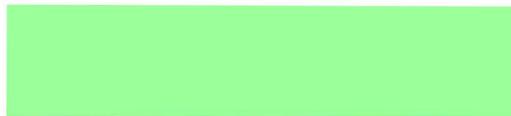
FILE:



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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (the director), denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and a 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 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 motion, the petitioner provides 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 [her] 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 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.

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.

Factual and Procedural History

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with USCIS on November 14, 2011. Therefore, the petitioner and beneficiary were required to have met between November 14, 2009 and November 14, 2011. 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 explained that he has not met the beneficiary because he cannot travel abroad due to his medical problems and the beneficiary is unable to obtain a visa to travel to visit him.

On May 10, 2012, 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 that meeting the beneficiary in person would have been a hardship for him. The petitioner timely appealed and the AAO dismissed the appeal on September 12, 2012. The petitioner submitted a timely motion to reopen with additional evidence.

The petitioner’s submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). He reasserts that due to severe injuries he received from an accident years ago, he is and has been unable to travel to visit the beneficiary. On motion, the petitioner’s assertion is supported by an additional letter from the petitioner’s mother, [REDACTED] and a letter from his physician, [REDACTED]. Accordingly, the motion to reopen is granted.

Analysis

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner’s eligibility and the petition will remain dismissed. The petitioner requests an exemption of the in-person meeting requirement due to his medical conditions that he asserts make it a hardship for him to travel. However, the new evidence submitted on motion does not overcome the director’s ground for denial.

In its prior decision, the AAO determined that the record did not contain probative information regarding the petitioner’s inability to travel to the Philippines to meet the beneficiary during the requisite two-year period and this decision is incorporated here. On motion, the petitioner submits a letter from [REDACTED] and a letter from his mother, [REDACTED]. [REDACTED] states that the petitioner did not previously share with him a fear of heights but that “[o]bviously this would be a tremendous stress to any person.” [REDACTED] further states that in order for the petitioner to travel to another country to meet with the beneficiary, he would have to drive to Mexico, South America, or Canada

which is “a very, very long car drive” and that a meeting where the petitioner has to drive for several days is not an option because he has “some medical and psychiatric problems that also preclude long travel.” [REDACTED] the petitioner’s mother, repeats her earlier statements submitted below that the petitioner is unable to travel due to health issues and that the beneficiary is unable to leave the Philippines. While we do not question [REDACTED] medical expertise, his assessment of the petitioner is brief and does not contain probative information establishing that meeting the beneficiary in a third country would be an extreme hardship, only stating that prolonged travel is not an option. [REDACTED] likewise fails to provide any probative information regarding her son’s ability to travel or eligibility for an exemption to the in-person meeting requirement.

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 remain dismissed and the petition will remain denied. 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.

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary’s eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The motion is dismissed. The September 12, 2012 decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed and the petition remains denied.