

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **JUN 13 2013** Office: CALIFORNIA SERVICE CENTER

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:

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 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 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 appeal, the petitioner, through counsel, provides a brief 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 [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. 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 U.S. Citizenship and Immigration Services (USCIS) on April 27, 2012. Therefore, the petitioner and beneficiary were required to have met between April 27, 2010 and April 27, 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 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 August 6, 2012, the director issued a request for evidence (RFE) to the petitioner, requesting him to provide additional evidence demonstrating compliance with the meeting requirement or evidence that compliance would cause him extreme hardship, or would violate strict and long-established customs of the beneficiary’s foreign culture or social practice. The director also requested that the petitioner submit evidence that the petitioner was divorced from his prior wife. In response to the RFE, the petitioner submitted a copy of his divorce decree from his prior wife and a notarized self-statement that briefly reiterated his request to waive the in-person meeting requirement. The petitioner also resubmitted letters from his two doctors

On September 25, 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.

Analysis

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. 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 appeal does not overcome the director’s ground for denial. On appeal, counsel asserts that the petitioner “has produced ample documentation evidencing his inability to travel due to a medical condition.” However, the record below consists of a brief letter from [REDACTED] a brief letter from [REDACTED], and a printout of product information for a medication prescribed to the petitioner. The four sentence letter from [REDACTED] stated that the petitioner is advised not to take any long trips including air trips at that time due to his low back condition but did not state how the petitioner’s back condition precluded air travel. The letter from [REDACTED] stated the petitioner is being treated for dyslipidemia and anxiety but did not conclude that these medical conditions would prevent the petitioner from any travel. Likewise, the printout for the prescription drug Naproxen did not provide probative information regarding the petitioner’s medical conditions that would prohibit any travel.

Additionally, counsel argues on appeal that the director failed to take into consideration that the petitioner finalized plans to travel to Singapore to visit the beneficiary but ultimately did not go due to

medical advice. Counsel compares the petitioner's claimed extreme hardship to another case where the AAO overturned the denial of a fiancée petition for a petitioner whose lung disease prevented him from travelling. On appeal, the petitioner submits another brief letter from [REDACTED] who states that the petitioner should not take any long trips for business or personal reasons because of the petitioner's "low back condition" and his cervical disc syndrome. [REDACTED] also states that the petitioner has a disc herniation of C5/6 and C6/7. However, [REDACTED] does not further provide any probative information about the nature of the petitioner's lower back condition or otherwise explain how it or his cervical disc syndrome prevents the petitioner from long-distance travel. While we do not question [REDACTED] or [REDACTED] medical expertise, their assessments of the petitioner below and on appeal, are brief and do not contain probative information establishing that meeting the beneficiary in a third country would be an extreme hardship.

Conclusion

The petitioner failed to establish that the statutorily required personal meeting between the petitioner and the beneficiary occurred 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 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.

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 appeal is dismissed. The petition remains denied.