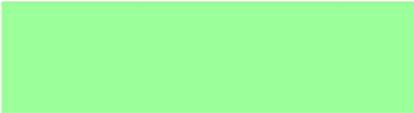




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 18 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:

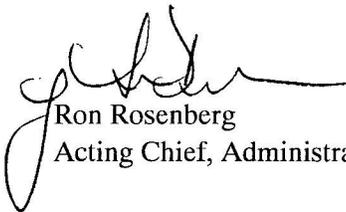
SELF-REPRESENTED

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 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. The director also determined that the petitioner failed to establish that he was legally free to marry the beneficiary at the time the petition was filed. 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 [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.

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 May 17, 2012. Therefore, the petitioner and beneficiary were required to have met between May 17, 2010 and May 17, 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 seen the beneficiary since he moved to the United States with their two daughters because the beneficiary was unable to obtain a visitor’s visa at that time. He explained that the two were separated before reconciling in 2012.

On August 17, 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 letters of intent to marry from both the petitioner and the beneficiary and evidence of the termination of the petitioner’s prior marriage. In response to the RFE, the petitioner submitted his letter of intent to marry the beneficiary, a request to waive the requisite in-person meeting, divorce summons for the petitioner, and birth certificates for the petitioner and beneficiary’s daughters.

On November 26, 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 director further determined that the petitioner failed to establish that his prior marriage was legally terminated.

Analysis

On appeal, the petitioner reasserts that he could not meet with the beneficiary during the requisite period because he as a single father, he was unable to take his daughters with him but also unable to leave them behind. He states that they live paycheck to paycheck and that his daughters are involved with many activities. He further asserts that the beneficiary currently works as a domestic worker in Singapore making it more difficult to meet due to their “different and hectic schedules.” He also states that his former wife passed away a year ago.

The petitioner submits as additional evidence: a personal statement; letter of intent to marry from the beneficiary; a certification of the nullity of marriage of the beneficiary and a prior husband; a letter from the beneficiary’s employer; the beneficiary’s employment contract for her employment in Singapore as a domestic employee; a 2011 income tax return for the petitioner; and a 2011 Form 1099-MISC for the petitioner.

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 2011 tax return and Form 1099-MISC shows that the petitioner did not earn a significant amount of income, the petitioner’s statements are brief and do not contain probative information establishing that meeting the beneficiary in the Philippines or a third country would be an extreme hardship. In his statement submitted with the Form I-129F, the

petitioner indicated that the beneficiary applied for and was denied a visitor's visa to the United States in 2001. However, he submitted no supporting documentation of the beneficiary's inability to travel during the requisite two-year period. He did not address the beneficiary's employment or other personal circumstances such that the in-person meeting would be an extreme hardship and does not submit supporting evidence on appeal. Further, the petitioner did not submit sufficient evidence, below or on appeal, of the termination of his previous marriage.

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. Additionally, the petitioner failed to establish that he was legally free to marry the beneficiary at the time the petition was filed. 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.