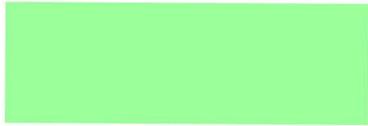




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 29 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 citizen of the Philippines, as the fiancé 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 nonimmigrant visa petition because the petitioner failed to establish that she and the beneficiary met in person during the two-year period immediately preceding the filing of the Petition for Alien Fiancé(e) (Form I-129F), or that she is exempt from such a requirement. On appeal, the petitioner submits evidence of having traveled to the Philippines in January 2009.

Applicable Law

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who 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 entry. . . .

Section 214(d) of the Act, 8 U.S.C. § 1184(d), states in pertinent part that a fiancé(e) petition:

[s]hall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within two 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 beneficiary's foreign culture or social practice

The regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty.

Factual and Procedural History

The petitioner filed the fiancé petition with U.S. Citizenship and Immigration Services (USCIS) on February 23, 2012. Therefore, the petitioner and the beneficiary were required to have met in person between February 23, 2010 and February 23, 2012. When she filed the petition, the petitioner stated that she last met the beneficiary in January 2009. In a July 23, 2012 Request for Evidence (RFE), the director informed the petitioner that she must submit evidence of having met the beneficiary in person during the required time period. In response, the petitioner submitted: copies of admission stamps from her passport and a flight itinerary, which reflect that she arrived in the Philippines on August 29, 2012 and departed on September 12, 2012; and two photographs of herself with the beneficiary, respectively film-dated September 10, 2012 and September 11, 2012. In a second RFE, dated October 29, 2012, the director reiterated that the petitioner must submit evidence of having met the beneficiary in person during the required time period. The director stated that the petitioner may request a waiver of the meeting requirement if it is established that compliance would result in extreme hardship to the petitioner, or violate strict and long-established customs of the beneficiary's foreign culture or social practice. In response, the petitioner submitted four undated photographs of herself with the beneficiary, and she resubmitted her flight itinerary and passport admission stamps from her August 2012 travel to the Philippines.

In denying the petition, the director determined that the petitioner failed to establish that she and the beneficiary met in person during the two-year period immediately preceding the filing of the petition, or that she is exempt from such a requirement. On appeal, the petitioner requests that the denial be reconsidered and states that she had to move to the United States alone for financial reasons without the beneficiary and their three children. The petitioner provides: copies of admission stamps from her passport, a flight itinerary and a boarding pass, which reflect that she arrived in the Philippines on January 7, 2009 and departed on January 20, 2009.

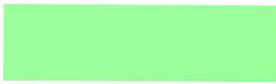
Analysis

As stated at section 214(d)(1) of the Act, the relevant time period in which the personal meeting between the petitioner and the beneficiary must occur is within the two-year period before the filing date of the petition. Here, the couple met over three years prior to the filing of the petition and had another meeting several months after the petition was filed. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa 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 last meeting would be relevant to any new fiancé petition that the petitioner may file for the beneficiary in the future, it has no relevance as to whether the couple met during the period applicable to this petition, which was between February 23, 2010 and February 23, 2012.

Conclusion

The statutorily required personal meeting between the petitioner and the beneficiary did not occur during the requisite time period and the petitioner is not exempt from such a requirement.

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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 now that the petitioner and the beneficiary have met in person.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition remains denied.