



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 26 2015**

Office: VERMONT SERVICE CENTER

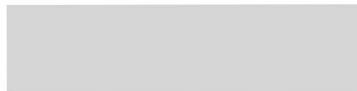
FILE:



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:



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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Center Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Eritrea, as the fiancée 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 center director denied the nonimmigrant visa petition based on the petitioner's failure to establish that he met the beneficiary in person during the two-year period before he filed the Petition for Alien Fiancé(e) (Form I-129F). On appeal, filed on August 4, 2014 and received by the AAO on January 12, 2014, the petitioner submits an additional statement regarding hardship to his mother due to her medical conditions and background country condition information on Eritrea, including a U.S. Department of State travel advisory regarding travel by U.S. citizens to Eritrea.

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), the petitioner may be exempted from the requirement for a meeting with the beneficiary if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the 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.

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 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 fiancé(e) petition with USCIS on May 6, 2013 without sufficient supporting evidence regarding the petitioner's requirement of having met his fiancée within the two year period prior to the filing date of the petition. For this reason, the center director issued a request for additional evidence. In response, the petitioner submitted additional documentary evidence including a statement regarding his need to care for his infirmed mother and letters from two doctors who are treating his mother's medical conditions.

The center director denied the petition finding that the petitioner had failed to submit evidence to establish that the he and the beneficiary had met during the two-year period immediately preceding the filing of the petition as required under section 241(d) of the Act or that meeting the beneficiary in person would violate strict and long-established customs of the beneficiary's foreign culture or social practice or result in extreme hardship to the petitioner.

On appeal, the petitioner explains that he met the beneficiary in 2008 and that he is the father of their child, who was born in 2009. He states that his mother is 86 years old, suffers from extremely poor health and vision problems and is completely dependent on the petitioner for all aspects of her daily needs and day-to-day care. The petitioner states that he is an only child, as his father passed away in 2009, and thus he is the only one to provide care and support for his mother. With respect to the petitioner's care for his mother's health problems, the center director stated that the petitioner did not prove that another caretaker could not have replaced him while he met with his fiancée in Ethiopia or in a third country to satisfy the requirement. On appeal, the applicant states that his father was a retired military veteran, his mother receives most of her health care at a military hospital and any temporary caretaker would need the ability to access the facility where his mother's health care is provided. A statement from one of the physicians treating the petitioner's mother indicates that she practices at the [REDACTED] in [REDACTED] Maryland.

The petitioner further states that there were and still are grave safety concerns regarding his travel to Eritrea, both as an American and as a former member of the [REDACTED] in [REDACTED] Eritrea. The record includes a copy of the U.S. Department of State travel warning for Eritrea, dated November 18, 2013 stating that the State Department continues to warn U.S. citizens of the risks of traveling to Eritrea and strongly recommends U.S. citizens defer all travel to the country. See *Eritrea Travel Warning, U.S. Department of State, dated November 18, 2013*. According to the Internet Website *allAfrica*, the U.S. Department of State issued a Travel Warning for Eritrea of April 18th, 2012, and

updated the warning on November 29, 2012. See, <http://allafrica.com/stories/201212040011.html>, accessed March 17, 2015. The U.S. Department of State most recently updated its travel warning for Eritrea on September 12, 2014, warning “U.S. citizens of the risks of travel to Eritrea and strongly recommends U.S. citizens not travel to the country since there is increasing possibility U.S. citizens will not receive the requisite exit permit from Eritrean authorities.” See *Eritrea Travel Warning, U.S. Department of State, dated September 12, 2014*. The petitioner also presents evidence in the form of a press statement from the government of Eritrea and a news article indicating the animosity that the government holds for the U.S. government.

In addition to the U.S. Department of State travel warning cited above, which indicates the difficulty in obtaining exit permits from Eritrean authorities, the record includes further evidence of the government restricting foreign travel and requiring citizens and some foreign nationals to obtain exit visas to depart the country. See, *Country Reports on Human Rights Practices for 2013 – Eritrea, U.S. Department of State, Bureau of Democracy, Human Rights and Labor*, <http://www.state.gov/documents/organization/220321.pdf>, accessed March 17, 2015.

The record includes copies of e-mail exchanges between the petitioner and the beneficiary, dated between September 30, 2012 and November 20, 2012, in which the petitioner and the beneficiary discuss trying to meet in person in either South Africa or [REDACTED]. However, they were never able to successfully arrange the meeting.

Analysis

The petitioner has established that compliance with the requirement that he and the beneficiary meet in person between May 6, 2011 and May 6, 2013 would have resulted in extreme hardship. The petitioner has shown that he provides care and support for his mother and would experience hardship if he were unable to do so. In addition, the record shows that the U.S. Department of State has warned U.S. citizens not to travel to Eritrea, and the fact that the petitioner was a former employee at the [REDACTED] in [REDACTED] is an additional concern were the petitioner travel to Eritrea. Likewise, it would have been an extreme hardship to require the couple to meet in a third country due to the restrictions that the government of Eritrea imposes on its citizens to obtain exit visas to depart the country.

The petitioner merits a favorable exercise of discretion to exempt him from the meeting requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2).

Conclusion

The appeal will be sustained for the above stated reasons. In fiancé(e) 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. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.