



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF B-T-O-

DATE: FEB. 26, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a citizen of the United States, seeks to classify the Beneficiary as a fiancé(e) of a United States citizen. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). The Director, California Service Center, denied the Petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the nonimmigrant visa petition because the Petitioner did not establish that he met the Beneficiary in person within the two-year period immediately preceding the filing of the Form I-129F, Petition for Alien Fiancé(e) or demonstrate that he merits a favorable exercise of discretion to exempt him from such meeting requirement. On appeal, the Petitioner submits a statement requesting a waiver of such requirement based on health condition and the fact that Nepalese society frowns upon marriage with a foreign person.

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 his discretion may waive the requirement that the parties have previously met in person. . . .

The statutory requirement of an in-person meeting between the petitioner and the beneficiary is further explained at 8 C.F.R. § 214.2(k)(2), which states:

The petitioner shall establish to the satisfaction of the director that the petitioner and K-1 beneficiary have met in person within the two years immediately preceding the filing of the petition. 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 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.

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*.

The Petitioner filed the fiancé(e) petition with USCIS on December 26, 2014, without sufficient supporting evidence. For this reason, on January 12, 2015, the Director issued a request for evidence (RFE) requesting the Petitioner to submit evidence that the Petitioner and the Beneficiary met within two years immediately preceding the filing of the petition or demonstrate that he merits a waiver of the meeting requirement. The Director also requested the Petitioner to submit certified copies of all police reports, and the final court disposition for every arrest or conviction. In response, the Petitioner submitted the requested police reports and certified court disposition for an arrest in 2013, photographs of the Petitioner and the Beneficiary taken in Nepal, and copies of his U.S. passport bearing immigration stamps from Nepal and copies of travel itinerary showing his trip to Nepal in October 2012. On June 16, 2015, the Director denied the petition, finding that the Petitioner did not submit evidence that he and the Beneficiary had met between December 26, 2012 and December 26, 2014, the two-year period preceding the filing of the petition, and did not establish eligibility for a waiver as required under section 214(d) of the Act.

On appeal, the Petitioner submits a statement requesting a waiver of the meeting requirement. The Petitioner states that he was unable to meet the Beneficiary as required because on June 28, 2014, he suffered a seizure and hematoma from a head trauma and underwent 8 hours of brain surgery to evacuate the hematoma. The Petitioner also states that he suffered a second seizure on April 7, 2015, and that his neurologist recommended that he not travel until his condition is under control. The

Petitioner further states that the Beneficiary's culture is not receptive to her planned marriage to him, a non-Nepalese citizen.

The Petitioner has not submitted evidence that he and the Beneficiary met in person between December 26, 2012 and December 26, 2014, which is the two-year period immediately preceding the filing of the petition, or submitted sufficient credible and probative evidence to establish that he merits a favorable exercise of discretion to exempt him from this requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). The Petitioner does not submit any medical record, doctor's note or other credible evidence to support his assertions on appeal that he suffered a seizure and a hematoma from a head trauma and that traveling to Nepal would result in extreme hardship to the Petitioner. The Petitioner states that his neurologist recommended that he not travel until his condition is "controllable" but submitted no letter or other documentation from his doctor recommending that he not travel. The Petitioner has failed to establish that traveling to Nepal to meet the Beneficiary as required would have resulted in extreme hardship to him. Even if we find that compliance with the meeting requirement would have resulted in extreme hardship to the Petitioner because of his health condition, the Petitioner has not indicated why he did not travel to Nepal to meet the Beneficiary before June 2014.

The Petitioner claims that Nepalese custom discourages the marriage between a Nepalese citizen and a foreign person and that as an American male, the Beneficiary's culture will not be very receptive to her marriage to him. As stated above, the regulation stipulates that the director may as a matter of discretion, exempt the petitioner from the two-year meeting requirement if it is established that compliance would violate strict and long-established customs of the K-1 beneficiary's foreign culture or social practice. The statement by the Petitioner does not establish that meeting the Beneficiary in person within the requisite time period would violate strict and long-established customs of the Beneficiary's foreign culture or social practice, and the record indicates that the Petitioner and Beneficiary met in person when he was in Nepal in October 2012.

Based on the evidence of record, the Petitioner has not established that compliance with the two-year meeting requirement would result in extreme hardship to him or that compliance would violate strict and long-established customs of the Beneficiary's foreign culture or social practice. As such, the Petitioner has failed to establish that he merits a favorable exercise of discretion to exempt him from the meeting requirement.

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-T-O-*, ID# 15543 (AAO Feb. 26, 2016)