



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

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

MATTER OF D-A-V-

DATE: JUNE 8, 2016

MOTION ON CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary as her fiancée. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). A U.S. citizen may petition to bring a fiancé(e) (and that person's children) to the United States in K nonimmigrant visa status for marriage. The U.S. citizen must 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 90 days of admission.

The Director, California Service Center, denied the petition. Finding that the petition was not accompanied by sufficient supporting evidence, the Director issued a notice of intent to deny the petition (NOID) allowing the Petitioner an opportunity to remedy the deficiency by providing evidence specified in the NOID. The Director determined the documentation supplied in response to be insufficient and denied the petition, accordingly. On appeal, the Petitioner submitted additional evidence, including documentation that her last in-person meeting with the Beneficiary was in 2002. Accordingly, we dismissed the appeal for failure to establish that the Petitioner and Beneficiary had met in person within the two years immediately preceding filing of the petition.

The matter is now before us on motion. In the motion, the Petitioner submits additional evidence, claims she was unable to travel to visit the Beneficiary for medical reasons, and asserts that her medical condition establishes the extreme hardship needed to be exempted from the two-year meeting requirement.

We will deny the motion.

**I. LAW**

The Petitioner is seeking to classify the Beneficiary as her fiancée.

Subject to subsections (d) and (p) of section 214 of the Act, section 101(a)(15)(K)(i) of the Act provides nonimmigrant classification for 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 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 . . . .

## II. ANALYSIS

The issue on motion is whether the Petitioner has submitted all documentation required to support a fiancé(e) petition. In lieu of having met the Beneficiary within the two years preceding the petition's filing, the Petitioner asserts that evidence entitles her to a waiver for medical reasons of the two-year meeting requirement. Upon further review, we find the record does not establish that complying with the two-year meeting requirement would have imposed upon the Petitioner the extreme hardship necessary for a discretionary waiver of this requirement. In addition, the Petitioner has still not provided evidence of the parties' mutual intent to marry *within 90 days* of the Beneficiary's U.S. admission.

The Director found the documentation initially submitted in support of the petition insufficient because it did not establish the parties' mutual intent to marry within 90 days of the Beneficiary's U.S. admission and did not show the Petitioner and Beneficiary had met in-person within the two years immediately preceding the May 2, 2014 petition filing. While admitting that she had not visited the Beneficiary for more than a decade preceding the petition filing, the Petitioner provided evidence showing they had regularly communicated throughout this period. Finding that the Petitioner had not established either having met the Beneficiary as required or that such a meeting would have imposed extreme hardship on the Petitioner, we dismissed the appeal. We find that the totality of the evidence is still insufficient to establish the extreme hardship needed to exempt the Petitioner from the two-year meeting requirement. The evidence is also insufficient to show the parties' mutual intent to marry each other within 90 days of the Beneficiary's admission to the United States.

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. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of a petitioner's circumstances. Generally, we look at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of a 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 only hardship ground presented on motion is based on the Petitioner's claim that her treatment for rheumatoid arthritis prevented her from traveling from May 2, 2012 to May 2, 2014. In support, she offers medical records and correspondence from her doctor. The records consist of laboratory results and physician's "progress notes" for medical care from 2012 to 2015. The evidence on the record is insufficient to establish, however, that the Petitioner was unable to travel at any time during the requisite period or under her doctor's orders not to do so. We note that there is no evidence what change in her condition allowed the Petitioner to travel to the Philippines in 2015 to celebrate her engagement with the Beneficiary.

The record contains copies of medical records, including handwritten progress notes containing medical terminology and abbreviations that are not easily understood, and laboratory results. The documents submitted do not contain a clear explanation of the Petitioner's medical condition or any limitations on her ability to travel. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any limitations on the Petitioner's activities, we are not in the position to reach conclusions concerning the severity of a medical condition or any resulting hardship.

The evidence provided by the Petitioner does not meet the requirements specified under section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2) for an exemption from the meeting requirement. The evidence does not establish that compliance with the regulatory requirement would result in extreme hardship to the Petitioner or that compliance would violate strict and long-established customs of the Beneficiary's foreign culture, social culture or religious practice.

We therefore find that the Petitioner has not established that she merits a favorable exercise of discretion to exempt her from the two year in-person meeting requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). As further stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition for failure to meet the two year in-person meeting requirement is without prejudice to the filing of a new petition once the Petitioner and the Beneficiary have met in person.

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The Petitioner must demonstrate a *bona fide* intention to marry. We find that the record lacks a statement from both the Petitioner and the Beneficiary of their intent to marry each other within 90 days of the Beneficiary's admission into the United States. Although the record contains statements from the Petitioner and Beneficiary stating their mutual intent to marry, these statements mention "as soon as possible" as the only timeframe for concluding the marriage. They do not establish that the Petitioner and Beneficiary are committed to fulfilling the statutory requirement of concluding a valid marriage within 90 days of the Beneficiary's arrival.

### III. CONCLUSION

It is the Petitioner's burden to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden. Accordingly, we deny the motion.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of D-A-V-*, ID# 16427 (AAO June 8, 2016)