



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

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

MATTER OF M-D-S-

DATE: MAY 2, 2016

APPEAL OF 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 his 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. The Director concluded that the Petitioner did not establish that he and the Beneficiary had met in person during the two-year period immediately preceding the filing of the Petition for Alien Fiancé(e), or establish that he merits a favorable exercise of discretion to exempt him from the meeting requirement.

The matter is now before us on appeal. In the appeal, filed in September 2015, the Petitioner submits a statement requesting additional time to travel to the Philippines to meet the Beneficiary and states he had plans to travel there in October 2015.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner is seeking to classify the Beneficiary as his 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 appeal is whether the Petitioner has established that compliance with the requirement that he and the Beneficiary meet in person during the two years before filing the fiancé(e) petition would result in extreme hardship. The Petitioner states that he was unable to travel to the Philippines to meet the Beneficiary during the requisite two-year period because he could not take time off of work but planned to visit her in October 2015, shortly after the appeal was filed. We find that the record does not demonstrate that compliance with the two-year meeting requirement would have resulted in extreme hardship to the Petitioner.

The Petitioner filed the fiancé(e) petition with U.S. Citizenship and Immigration Services (USCIS) on May 18, 2015. Therefore, the Petitioner and the Beneficiary were required to have met in person between May 18, 2013 and May 18, 2015. 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 Petitioner filed the fiancé(e) petition without sufficient supporting evidence, and the Director issued a request for evidence (RFE) asking the Petitioner to submit evidence either that he met the Beneficiary in person during the requisite time period or that he merits a waiver of the meeting requirement. In

response, the Petitioner submitted letters he wrote to the Beneficiary dated in the 1980s, receipts for money transfers to the Beneficiary and to their child, and photographs of the Petitioner and Beneficiary together. The Director denied the petition, finding that although the Petitioner had established he and the Beneficiary had met, the evidence established that their most recent meeting was in 2011 and not during the requisite period, and he did not establish that he merits a favorable exercise of discretion to exempt him from the meeting requirement.

On appeal, the Petitioner submits a statement requesting additional time to travel the Philippines to meet the Beneficiary. The Petitioner states that he had not been able to meet with the Beneficiary because he had to bid on his vacation days and did not have seniority at his company, but he was granted leave in October 2015 and intended to travel to the Philippines during this period. The record also contains a statement from the Petitioner indicating that he met the Beneficiary in 1981, when he was stationed in the Philippines, and that he and the Beneficiary had a child together. The Petitioner stated that after he returned to the United States, he kept in touch with the Beneficiary and supported her and his child financially but eventually lost contact with them until recently, when he was contacted by his child. The Petitioner stated that he and the Beneficiary renewed their relationship and he filed the petition for her, and he submitted letters, photographs, and money transfer receipts as evidence of their relationship.

Although the photographs, letters, and money transfer receipts show that the Petitioner and the Beneficiary had a prior relationship, they do not establish that the Petitioner and the Beneficiary have met each other as required during the requisite period for this petition. The Petitioner states that he was unable to take time off of work during the requisite period, but has not claimed that traveling to meet the Beneficiary at any time from May 18, 2013, to May 18, 2015, would have resulted in extreme hardship. Further, the Petitioner's intended travel to the Philippines in October 2015 will not satisfy the meeting requirement for this petition.

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 he merits a favorable exercise of discretion to exempt him 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.

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 dismiss the appeal.

Matter of M-D-S-

ORDER: The appeal is dismissed.

Cite as *Matter of M-D-S-*, ID# 16248 (AAO May 2, 2016)