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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



6

Date: Office: VERMONT SERVICE CENTER

**APR 02 2012**

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be 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(e) 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 petition because the petitioner had failed to: (1) establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition; or (2) submit sufficient evidence that meeting the beneficiary in person would have been a hardship for him. On appeal, the petitioner provides a statement and additional evidence.

#### *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 K-1 beneficiary's foreign culture or social practice . . . .

#### *Factual and Procedural History*

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on December 14, 2010. Therefore, the petitioner and beneficiary were required to have met between December 14, 2008 and December 14, 2010. On the Form I-129F, the petitioner had marked "no" to the question about whether he and the beneficiary had met in person within the two-year period preceding the filing of the petition. The petitioner submitted a letter with the initial filing, in which he stated that he has not visited the beneficiary in the Philippines since May 2008.

He stated that since May 2008 he has worked and studied for an examination for licensure as a registered nurse.

On May 26, 2011, the director issued a request for evidence (RFE) to the petitioner, requesting him to provide additional evidence demonstrating that compliance with the meeting requirement would cause him extreme hardship, or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. In response to the RFE, the petitioner submitted a letter in which he stated that he moved to the United States in May 2008 to reside with his family in New Jersey. He recalled that in August 2008 he had his first position as a nurse assistant and in September 2008 the beneficiary passed the licensing examination for registered nurses. He stated that he paid for her licensing examination and her application for credentials verification in New York. The petitioner recalled that he was laid off from his position in July 2009 and he filed for unemployment benefits. He stated that he then decided to take the licensing examination for registered nurses, but failed the examination. The petitioner recounted that he filed his naturalization application in February 2010, took a review course for the licensing examination in June 2010, took the licensing examination in October 2010, became a naturalized U.S. citizen on November 3, 2010, applied for his U.S. passport on November 9, 2010, and filed the Form I-129F on December 14, 2010. The petitioner stated that in February 2011 he was hired as a sales representative with a car dealership and is currently employed as a mailroom clerk at a car dealership and a part-time laboratory assistant at a pharmacy. The petitioner submitted: documents related to the beneficiary's licensing examination results and credentials verification; his licensing examination results; evidence of his unemployment; his earnings and leave statements for his previous and current employment; and documents related to his naturalization application.

On September 29, 2011, the director denied the petition, finding that the petitioner had not met the beneficiary during the requisite period and he had not submitted sufficient evidence of extreme hardship to waive this requirement. On appeal, the petitioner states that he visited the beneficiary in the Philippines from August 4, 2011 until August 24, 2011. He states that he has been in a relationship with the beneficiary for eight years. The petitioner submits evidence of his August 2011 travel to the Philippines, including: a copy of his U.S. passport with arrival and departure stamps; his flight itinerary; his boarding pass; and photographs of himself with the beneficiary.

### *Analysis*

Although the petitioner presented evidence that he visited the beneficiary in the Philippines from August 4, 2011 until August 24, 2011, this travel was not within the requisite time period. 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 prior to this time period and 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.

While the evidence of the couple's meeting would be relevant to any new fiancé(e) petition that the petitioner may file for the beneficiary in the future, it has no relevance to whether the couple met during the period applicable to this petition, which was between December 14, 2008 and December 14, 2010.

The petitioner asserts that compliance with the meeting requirement would result in extreme hardship to him because he was unemployed from July 2009 until February 2011. The regulation at 8 C.F.R. § 214.2(k)(2) 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. In this case, the financial hardships noted by the petitioner are temporary in nature. The petitioner has been employed since February 2011 and he visited the beneficiary in the Philippines in August 2011. Thus, the evidence presented by the petitioner does not demonstrate that compliance with the meeting requirement would result in extreme hardship to him. 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.

*Conclusion*

The statutorily required personal meeting between the petitioner and the beneficiary did not occur during the required time period and the petitioner is not exempt from such a requirement. Consequently, the beneficiary may not benefit from the instant petition and it must remain denied. The appeal is, therefore, dismissed.

The burden of proof in these proceedings rests solely with the petitioner. [REDACTED] Here, the petitioner has not met that burden.

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