



U.S. Citizenship
and Immigration
Services

(b)(6)

Date:

MAY 13 2013

Office: CALIFORNIA 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:

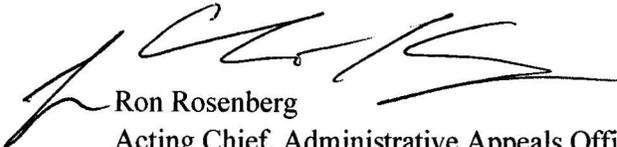
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

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

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and a citizen of the Philippines, as the fiancée 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

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):

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, 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. 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 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 Petition for Alien Fiancé(e) (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 Petition for Alien Fiancé(e) (Form I-129F) with USCIS on December 1, 2011. Therefore, the petitioner and beneficiary were required to have met between December 1, 2009 and December 1, 2011. On the Form I-129F, the petitioner indicated “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 an addendum to the Form I-129F, in which he explained that he has not met the beneficiary because he is the primary caretaker of his elderly and infirm parents who require 24-hour care.

On May 2, 2012, the director issued a request for evidence (RFE) demonstrating compliance with the meeting requirement or evidence that compliance 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 personal letter, a letter from his mother [REDACTED] and a letter from his parents’ doctor, [REDACTED] M.D. In his letter, the petitioner stated that his father was wheelchair bound, had Alzheimer’s disease, and required daily assistance. He also stated that his mother suffered from several degenerative diseases and also required daily assistance. In her letter, [REDACTED] stated that she and her husband would suffer extreme hardship if the petitioner were to leave them because he lived with and cared for them daily. Dr. [REDACTED] explained that [REDACTED] suffered from degenerative disc disease, among other ailments, and required assistance with household chores including meal preparation, shopping, and housekeeping. He further stated that the petitioner’s father suffered from dementia and that it would be a hardship for the petitioner’s parents if the petitioner were not allowed to continue to live with and care for them.

On September 3, 2012, the director denied the petition, concluding that the petitioner did not establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition, or establish his eligibility for a waiver of that requirement.

Analysis

On appeal, the petitioner submits a brief statement indicating that he travelled to the Philippines to meet the beneficiary, photographs of himself and the beneficiary, and an admission stamp from his passport, which shows that he traveled to the Philippines on November 19, 2012. Therefore, the record reflects that the couple met in person after the petition was filed.

A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new

set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). While the evidence of the couple's meeting would be relevant to any new fiancée 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 1, 2009 and December 1, 2011.

Upon a full review of the record, including the evidence provided on appeal, we find no error in the director's decision to deny the petition. Initially, the petitioner stated that as the primary caretaker of his elderly and infirm parents, he could not visit the beneficiary during the two-year requisite period between December 1, 2009 and December 1, 2011. On appeal, the petitioner states that he arranged for adult care and travelled to the Philippines to see the beneficiary, demonstrating that his conditions did not preclude a visit to the Philippines.

Conclusion

The statutorily required personal meeting between the petitioner and the beneficiary did not occur during the requisite time period and the petitioner has not demonstrated that he is eligible for a discretionary waiver of such a requirement. Consequently, the beneficiary may not benefit from the instant petition and it must remain denied. The appeal is, therefore, dismissed. 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 recently met in person.

In these proceedings, the petitioner bears the burden of proof to establish the beneficiary's eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

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