



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 28 2015**

FILE: [REDACTED]

PETITION RECEIPT: [REDACTED]

IN RE: Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, as the fiancée of a U.S. 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 nonimmigrant visa petition, because the petitioner did not establish that he and the beneficiary met in person during the two-year period immediately preceding the filing of the Form I-129F, Petition for Alien Fiancé(e), or that he is exempt from such a requirement. On appeal, the petitioner provides a personal statement, letters from a physician and a nurse practitioner, and other supporting medical documentation.

Applicable Law

Section 101(a)(15)(K) of the Act provides nonimmigrant classification to, in pertinent part:

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 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 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, in pertinent part:

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

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.

Factual and Procedural History

The petitioner filed Form I-129F on July 10, 2014; therefore, the petitioner and beneficiary were required to have met between July 10, 2012, and July 10, 2014. 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.

In an October 3, 2014, Request for Evidence (RFE), the director asked the petitioner to submit evidence of having met the beneficiary in person during the required time period or additional evidence to request a waiver of the meeting requirement. The director also requested statements from the petitioner and the beneficiary of their intention to marry one another within 90 days of the beneficiary's admission into the United States. In response to the RFE, the petitioner provided a letter stating that he is totally and permanently disabled and that due to his medical conditions, "a personal meeting is not just an extreme hardship[;] it is impossible." He added that long distance air travel "is impossible." The petitioner also submitted letters from a doctor, a case manager, and a family nurse practitioner. In addition, the petitioner submitted a letter stating that he intends to marry the beneficiary within 60 days of her arrival and a letter from the beneficiary stating that she has started planning the wedding and will marry the petitioner within two to three weeks after wedding preparations made.

The director denied the petition, concluding that the petitioner had not demonstrated that his medical conditions prevent him from meeting the beneficiary. The director noted that the evidence submitted in response to the RFE showed that the petitioner has chronic back pain due to arthritis and underwent a functional assessment in physical therapy, utilizes oxygen with exercise and when he is asleep, and has various physical restrictions; however, the evidence did not establish the petitioner is unable to travel or that travelling is extremely difficult.

On appeal, the petitioner asserts that travelling would not only be a hardship to him but, given his inability to sit or stand for longer than a few minutes, would be impossible. The petitioner resubmits the medical evidence he submitted in response to the RFE.

Analysis

The petitioner has not submitted probative evidence that he and the beneficiary met in person between July 10, 2012, and July 10, 2014, which is the two-year period immediately preceding the filing of the petition. He contends, however, that he merits a favorable exercise of discretion to exempt him from such requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2).

To support his assertion that travel is not possible for him, the petitioner submits medical documentation indicating that the petitioner cannot lift more than 20 pounds or carry objects weighing more than 20 pounds; he can tolerate sitting for a maximum of 10 minutes and standing for a maximum of between two and three minutes; and he is unable to stoop and bend. The October 21, 2014, home health note from a nurse practitioner also indicates that the petitioner uses traction to treat chronic neck pain, has been diagnosed with COPD, and utilizes oxygen.

The record establishes that the petitioner's medical conditions severely restrict his physical activities and would make him unable to travel. There is no requirement that travel be impossible for the petitioner; only that travel results in extreme hardship. On appeal, the petitioner has established that compliance with the meeting requirement would cause him extreme hardship, considering his medical conditions and severely limited physical abilities. The relevant evidence also demonstrates that the petitioner merits a favorable exercise of discretion to waive the meeting requirement due to the extreme hardship compliance would cause the petitioner.

The record, however, still lacks sufficient evidence from the beneficiary of her intention to marry petitioner within 90 days of her admission to the United States in K-1 status.

The *Instructions* to the Form I-129F require that both the petitioner and the beneficiary provide evidence of their intent to marry one another within 90 days of the beneficiary's admission to the United States in K-1 status. The petitioner submitted a letter, stating his intent to marry the beneficiary within 60 days of the beneficiary's admission to the United States in K-1 status. However, the record does not include a statement from the beneficiary of her intention to marry petitioner within 90 days of her admission to the United States in K-1 status. The beneficiary in her letter states that she has started planning the wedding and will marry the petitioner within two to three weeks after wedding preparations are made. The petitioner also submits a photograph of a wedding-style dress. The beneficiary, however, describes wedding preparations, which are not definitive in terms of timeframe and could extend beyond 90 days after the beneficiary's admission. This evidence, therefore, is insufficient to establish the beneficiary's intent to marry the petitioner within 90 days of her admission into the United States in K-1 status.

A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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, USCIS may, in its discretion, deny the petition for lack of initial evidence. The petitioner did not submit the required documentation, and the beneficiary may not benefit from the instant petition.

Conclusion

As the petitioner has not submitted all of the required initial evidence on appeal, the director's decision to deny the petition shall not be disturbed. In fiancée visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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