



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

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

MATTER OF K-C-

DATE: DEC. 17, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a citizen of the United States, seeks to classify the Beneficiary as a fiancé(e) of a United States citizen. *See* Immigration and Nationality Act (INA, or the Act) § 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

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 Petition for Alien Fiancé(e), or establish that he merits a favorable exercise of discretion to exempt him from the meeting requirement. On appeal, the Petitioner submits additional evidence, including a statement from the Petitioner, statements from other Burmese refugees in Malaysia attesting to their personal mistreatment by the Malaysian government, and country condition information on the mistreatment of Burmese refugees and asylum seekers by the Malaysian government.

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.

(b)(6)

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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 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:

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 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.

Facts and Procedural History

The Petitioner filed the fiancé(e) petition with U.S. Citizenship and Immigration Services (USCIS) on May 27, 2014. Therefore, the Petitioner and the Beneficiary were required to have met in person between May 27, 2012 and May 27, 2014. When he filed the petition, the Petitioner stated that he met the Beneficiary in [REDACTED] 2011, and that they got married in a religious ceremony in Malaysia.

In a September 15, 2014 request for evidence (RFE), the Director asked the Petitioner to submit evidence showing 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 a statement requesting a waiver of the meeting requirement. The Petitioner acknowledged that he met the Beneficiary in person in June 2011, which was outside the required period, but indicated that compliance with the meeting requirement would result in extreme hardship to him. The Petitioner also claimed that compliance would result in financial hardship to him. The Petitioner submitted a statement indicating that because they were Burmese refugees, he and the Beneficiary were detained by the Malaysian police and subjected to harassment, threats of imprisonment, and extortion when he visited the Beneficiary in June 2011. The Petitioner also submitted statements from other Burmese refugees in

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Malaysia attesting to their own mistreatment by the Malaysian officials. The Petitioner also submitted reports from Amnesty International and the U.S. Senate Committee on Foreign Relations documenting the mistreatment of Burmese refugees and asylum seekers by the Malaysian government.

On January 14, 2015, the Director denied the petition. In denying the petition, the Director determined that the Petitioner had not established that he and the Beneficiary met in person during the two-year period immediately preceding the filing of the petition as required under section 214(d) of the Act, or that meeting the Beneficiary in person would violate strict and long-standing customs of the Beneficiary's foreign culture or social practice or result in extreme hardship to the Petitioner. The Director stated that absent further evidence or other factors, the expense of foreign travel and other related financial obligations are normal hardships that most people face and do not rise to the level of extreme hardship.

On appeal, the Petitioner states that the Director did not fully consider all the evidence he submitted in the record, which shows that he will be subjected to hardship beyond the ordinary hardships people face in satisfying the meeting requirement. The Petitioner describes the detention, harassment and extortion he and the Beneficiary were subjected to in June 2011 when he visited Malaysia. The Petitioner states that he is at risk of gross mistreatment should he be forced to travel to Malaysia to satisfy the meeting requirement. The Petitioner also submitted additional statements from Burmese refugees and information on the mistreatment of Burmese refugees in Malaysia.

Analysis

The Petitioner has established that compliance with the requirement that he and the Beneficiary meet in person between May 27, 2012 and May 27, 2014 would have resulted in extreme hardship to him. The Petitioner is a former Burmese refugee who was resettled in the United States in 2007 and became a naturalized citizen of the United States in 2013. The record indicates that the Petitioner and the Beneficiary last met in 2011, when they had a religious marriage ceremony. The Petitioner states that he believed that this was a valid marriage, and he filed a Form I-130, Petition for Alien Relative, on behalf of the Beneficiary, which was approved in 2013. However, when the Beneficiary applied for an immigrant visa, the visa was denied, and the Form I-130 petition was subsequently revoked because their marriage was not registered with the Malaysian government. The record indicates that refugees in Malaysia are unable to obtain and register marriage certificates because of their unlawful status. Following the revocation of the I-130 petition in 2014, more than two years after the couple's meeting in 2011, the Petitioner filed the Form I-129F petition to classify the Beneficiary as the fiancée of a United States citizen.

The Petitioner states that he was detained, harassed and mistreated by the Malaysian police when he visited the Beneficiary in June 2011 because he was in the company of the Beneficiary, who is a Burmese refugee with no legal rights in Malaysia. Country condition information submitted by the Petitioner documents the lack of legal status of refugees and asylum seekers in Malaysia, where they are not distinguished from undocumented migrants and are not afforded any protection. The evidence on the record indicates that due to their unlawful status, they are vulnerable to arrest and deportation as

well as extortion and mistreatment by the Malaysia government. Based on the evidence of record, the Petitioner has established that he, along with the Beneficiary, would be at risk of mistreatment or extortion at the hands of the Malaysian government if he travels to Malaysia to comply with the meeting requirement.

The Petitioner has also established that he would experience financial hardship if he traveled to Malaysia. The record indicates that the Petitioner earns about \$23,000 per year working at a poultry processing plant. He claims he supports the Beneficiary financially and also supports relatives in Burma, and receipts for remittances sent by the Petitioner to Malaysia and Burma support this assertion. Although the expense of travel to a foreign country is a common requirement to those filing the Form I-129F petition and does not itself amount to extreme hardship, the mistreatment that the Petitioner might encounter is beyond the normal hardship associated with the meeting requirement. Considered in the aggregate, the risk of mistreatment or extortion based on the Beneficiary's status as an undocumented Burmese refugee and the financial hardship resulting from traveling to Malaysia in compliance with the meeting requirement would result in extreme hardship to the Petitioner. The record indicates that meeting in a third country is not an option because the Beneficiary is a refugee without any travel document that would allow her to travel and return to Malaysia.

Based on the totality of the evidence of record, we find that the Petitioner has established that compliance with the meeting requirement would result in extreme hardship to him. The Petitioner merits a favorable exercise of discretion to exempt him from the meeting requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2).

The appeal will be sustained for the above stated reasons. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of K-C-*, ID# 14532 (AAO Dec. 17, 2015)