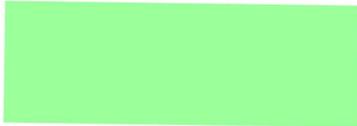




U.S. Citizenship
and Immigration
Services

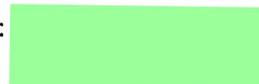
(b)(6)



Date: JAN 13 2015

Office: CALIFORNIA SERVICE CENTER

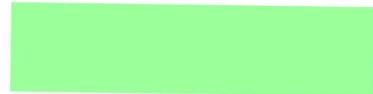
FILE:



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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (director), denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and motion to reopen. The petitioner has filed a second motion to reopen, that we will accept. Our previous decisions and the decision of the director will be affirmed and the petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, 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 nonimmigrant visa petition because the petitioner failed to establish that he and the beneficiary met in person during the two-year period immediately preceding the filing of the petition, or demonstrate his eligibility for a waiver of the meeting requirement. We summarily dismissed the petitioner's subsequent appeal and motion as neither of the filings addressed the reasons for the director's denial.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). On appeal, the petitioner submits additional evidence. We approve the motion to reopen.

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 his discretion may waive the requirement that the parties have previously met in person. . . .

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 March 27, 2013. Therefore, the petitioner and the beneficiary were required to have met in person between March 27, 2011 and March 27, 2013.

On the Form I-129F, the petitioner indicated that he met the beneficiary on social media and did not state that he had met the beneficiary within two years immediately preceding the filing of the petition. The petitioner submitted evidence that he visited the beneficiary in Viet Nam in the summer of 2013, after the requisite period. The director denied the petition. On appeal, the petitioner acknowledged that he filed the petition prior to meeting the beneficiary in person, but was afraid of losing her. On the first motion, the petitioner corrected an administrative error. With the instant motion, the petitioner submits evidence that he visited the beneficiary again in the spring of 2014.

Analysis

We review the evidence *de novo*.

Although the petitioner presented evidence that he visited the beneficiary in Vietnam from June 29 – August 2, 2013, and in spring, 2014, the meetings were 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 immediately preceding the filing date of the petition. Here, the couple met subsequent to this time period.

The petitioner does not seek a waiver of the requirement of a personal meeting. Thus, the evidence presented by the petitioner does not demonstrate that he is eligible for a waiver of the meeting requirement. The director's decision to deny the petition is, therefore, affirmed.

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 instant petition must remain denied and 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.

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

ORDER: The motion is approved. The director's decision, dated September 19, 2013, and our decisions, dated March 5, 2014 and July 31, 2014, are affirmed and the petition remains denied.