



U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

JUL 02 2015

FILE:

APPLICATION RECEIPT #:

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:

NO REPRESENTATIVE OF RECORD

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 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 nonimmigrant visa petition pursuant to 8 C.F.R. § 103.2(b)(8)(ii) because the petitioner failed to establish that he had met the beneficiary in person during the two-year period before he filed the Petition for Alien Fiancé(e) (Form I-129F). *Decision of the Director*, dated October 5, 2012. The petitioner filed an appeal on October 22, 2012, received by the AAO on January 12, 2015, but submits no 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. . . .

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 fiancé(e) petition with USCIS on January 31, 2012, without sufficient supporting evidence. For this reason, on June 13, 2012, the director issued a request for additional evidence that the petitioner and beneficiary had met during the two-year period prior to filing the petition. In response, the petitioner submitted a statement and documentation regarding his brother's

medical condition. The director denied the petition finding that the petitioner had failed to submit evidence to establish that he and the beneficiary had met as required under section 241(d) of the Act, or that his brother's medical condition prohibited him from traveling to visit the beneficiary nor her from visiting the petitioner. The petitioner submitted no additional evidence on appeal.

Analysis

The petitioner has not claimed nor submitted probative evidence that he and the beneficiary have met in person between January 31, 2010, and January 31, 2012, which is the two-year period immediately preceding the filing of the petition, or sufficient evidence that the petitioner 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). In their statements the petitioner and the beneficiary indicate that they met in the Philippines in 1977 and again when the petitioner vacationed in the Philippines, which the beneficiary states was August 2009. These meetings fall outside the two-year period immediately preceding the filing of the application.

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from the requirement for a meeting with the beneficiary if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long established customs of the 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.

In a letter dated August 13, 2012, the petitioner states that he was unable to visit the Philippines during the period from January 31, 2010, to January 31, 2012, because his brother was diagnosed with end state renal disease and was on dialysis. The petitioner states that because of the expense in hiring a care giver for his brother he decided to be the care giver from August 31, 2009, until his brother received a kidney transplant on February 29, 2012, and continues to be the care giver as his brother has not yet fully recovered and is undergoing physical therapy. Letters dated in August 2012 from the brother's medical doctor and social worker state the petitioner was the primary care giver. Although documentation in the record establishes that the petitioner's brother suffers from a serious medical condition, it does not establish that the petitioner could not have arranged temporary care for his brother at any time in order to visit the beneficiary. The record does not establish that meeting the beneficiary would have resulted in extreme hardship for the petitioner during the entire two-period prior to his filing of the petition.

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NON-PRECEDENT DECISION

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The record also does not contain evidence from the petitioner and the beneficiary of the intent to marry within 90 days of the beneficiary's arrival into the United States.¹

Conclusion

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner has not met that burden.

ORDER: The appeal is dismissed.

¹ Neither the request for evidence nor the director's decision indicates that the petitioner failed to submit evidence of his and the beneficiary's intent to marry within 90 days of her arrival into the United States.