



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

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

MATTER OF C-V-N-

DATE: NOV. 30, 2015

APPEAL OF VERMONT 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 (the Act) § 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the nonimmigrant visa petition because the Petitioner failed to establish that he and the Beneficiary met in person within the two-year period immediately preceding the filing of the current petition. The petitioner timely appeals and submits 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 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:

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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.

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*.

Factual and Procedural History

The record reflects that the Petitioner had previously filed two other petitions for the Beneficiary. The first petition was filed with U.S. Citizenship and Immigration Services (USCIS) on June 30, 2008. The petition was approved by the Director on February 25, 2009, but was returned to USCIS following the Beneficiary's interview at the U.S. Consulate in [REDACTED] Vietnam on August 6, 2009. The Department of State consular officer who conducted the interview determined that the Beneficiary was not eligible to receive a visa because her relationship to the Petitioner was not "bonafide." The consular officer then concluded that the Beneficiary had entered into the relationship with the Petitioner for the sole purpose of evading U.S. immigration laws and recommended that the Petitioner's Form I-129F be revoked.

On March 30, 2010, the Director notified the Petitioner that the approved petition had been returned because consular officials determined that the Beneficiary was unable to submit evidence or present herself at interview in a manner that would indicate that she and the Petitioner have a bona fide relationship. The Director did not revoke approval of the Petitioner's Form I-129F but administratively closed the petition without prejudice to filing a new petition because the original validity dates had expired.

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On May 10, 2010, the Petitioner filed a new petition with USCIS. The petition was approved on July 28, 2010, but the consular officer again refused to issue a visa to the Beneficiary and returned the petition for revocation after concluding that the relationship was not bona fide. On November 1, 2012, the Director notified the Petitioner that the approved petition had been returned without notifying the Petitioner the reason the petition was returned. The Director did not revoke the approval of the Petitioner's second Form I-129F, but again administratively closed the petition without prejudice to filing a new petition because the original validity dates for the petition had expired.

The Petitioner filed the current fiancé(e) petition with USCIS on May 9, 2011, without all the required supporting evidence. The Petitioner and the Beneficiary were required to have met in person between May 9, 2009 and May 9, 2011, the two-year period preceding the filing of the petition. On the Form I-129F, the Petitioner indicated that he met the Beneficiary in 2006, that they were engaged in 2008, and that they have known each other for more than six years. The record contains evidence that the Petitioner traveled to Vietnam and met the Beneficiary in January 2006 and April 2009 and evidence that the Petitioner and the Beneficiary have a bona fide intention to marry and are legally able and willing to conclude a valid marriage in the United States within a period of ninety days after the Beneficiary's arrival.

In the current petition, the Petitioner failed to submit evidence that he and the Beneficiary met in person within two years preceding the filing of the petition. For this reason, the Director issued a request for evidence (RFE), dated October 25, 2012, requesting the Petitioner to submit evidence that he met the Beneficiary in person within the requisite time period (May 9, 2009 to May 9, 2011) or demonstrate that he merits a favorable exercise of discretion to exempt him from this requirement. The Petitioner submitted a statement providing the dates he had traveled to Vietnam. The Petitioner also stated that due to the [REDACTED], he was not able to travel because he had to remain in the United States to complete the necessary paperwork with [REDACTED] for loss of income as he was unable to work as a fisherman due to the oil spill. The Petitioner indicated that he traveled to Vietnam in September 2011. The Petitioner also submitted a statement from the Beneficiary detailing how and when she met the Petitioner and when they were engaged as well as two statements from the Petitioner's friends stating that they met the Petitioner in Vietnam in September 2011. The Director found the evidence submitted insufficient and denied the petition on October 31, 2013.

On appeal, the Petitioner submits a statement dated November 16, 2013, stating that he and the Beneficiary have been together for 6 years and that he has already submitted whatever documents he has available. The Petitioner states that his health condition has limited what he can do and he is not able to do as much as he used to do, and he requests that the Director approve his petition because he and the Beneficiary need each other. The Petitioner submits a statement from [REDACTED] dated November 21, 2013, copies of his medical records, and a copy of a travel itinerary for his travel to Vietnam from September 2011 through November 2011. The record also contains a statement from the manager of [REDACTED] dated April 1, 2011, stating that the Petitioner was an employee of the company, the company was closed from May 2010 through January 2011 because of the [REDACTED] and they are unsure about the future of the company.

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Analysis

The Petitioner states he did not meet the Beneficiary between May 9, 2009 and May 9 2011, but claims 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).

Based on the evidence in the record, the Petitioner has not established that compliance with the regulatory requirement that he and the Beneficiary meet within the requisite period would result in extreme hardship to him or that compliance would violate strict and long-established customs of the Beneficiary's foreign culture or social practice. In this matter, the Petitioner is not claiming that compliance would violate strict and long-established customs or social practice. The Petitioner is claiming that compliance would result in extreme hardship to him because of his health condition and financial hardship resulting from the [REDACTED]. Further, the Petitioner states that he had expended money with the two unsuccessful petitions he had previously filed for the Beneficiary.

The statement dated November 21, 2013, from the Petitioner's doctor indicates that the Petitioner has been his patient since November 2012, that the Petitioner had suffered a cardiovascular accident secondary to atrial fibrillation in February 2012, and that the Petitioner needs to be on anticoagulation long term. The doctor notes that the petitioner would benefit from having a caregiver to help him keep up with his medical care, appointments, and medications. The doctor's statement does not establish why the Petitioner was unable to travel to Vietnam between May 9, 2009 and May 9, 2011 or demonstrate that the Petitioner's travel to Vietnam would result in extreme hardship to him. The medical record submitted by the Petitioner indicates that he was hospitalized in February 2012 for three days for acute left middle cerebral artery distribution stroke and atrial fibrillation. The Petitioner's stroke in 2012 was outside the requisite time period and does not establish that the Petitioner could not have traveled from 2009 to 2011. Even if the medical record established that the Petitioner was unable to travel to Vietnam after suffering a stroke in 2012, the Petitioner has not established that travel between May 9, 2009 and May 9, 2011, to meet the Beneficiary would have resulted in extreme hardship.

The Petitioner has also failed to establish that complying with the regulatory requirement will result in extreme financial hardship to him. We acknowledge that the Petitioner has expended money in his two prior unsuccessful petitions and that his income may have been adversely impacted as a result of the [REDACTED]. But the Petitioner did not provide sufficiently detailed evidence to substantiate his claim of financial hardship. In his November 4, 2012, statement, the Petitioner stated that he had to remain in the United States to complete paperwork for compensation from the oil spill and to be readily available to respond to [REDACTED] if there was any missing paper work. The statement from the manager, [REDACTED] talked about the impact of the oil spill on the business but did not provide further information on the financial impact to the Petitioner. The statements alone do not substantiate the Petitioner's claim that compliance would have resulted in extreme financial hardship to him.

The Petitioner has not established that he merits a favorable exercise of discretion to exempt him from the requirement that he and the Beneficiary meet in person during the two year period immediately preceding the filing of the Petition. In this case they were required to have met between May 2009 and

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May 2011. The evidence provided by the Petitioner does not establish that compliance with the meeting requirement would result in extreme hardship to the Petitioner or violate strict and long-established customs of the Beneficiary's foreign culture or social practice.

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. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of C-V-N-*, ID# 13285 (AAO Nov. 30, 2015)