



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF S-K-

DATE: MAY 11, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary as his fiancée. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). A U.S. citizen may petition to bring a fiancé(e) (and that person's children) to the United States in K nonimmigrant visa status for marriage. The U.S. citizen must establish that the parties have previously met in person within two 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 90 days of admission.

The Director, California Service Center, denied the petition. The Director concluded the Petitioner failed to establish that he met the Beneficiary in person during the two-year period before he filed the Form I-129F.

The matter is now before us on appeal. In the appeal, the Petitioner submits additional evidence and claims that the Director erred by not considering the illness of the Petitioner's father as making the Petitioner unable to meet his fiancée within two years before filing the petition without incurring extreme hardship.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner is seeking to classify the Beneficiary as his fiancée.

Subject to subsections (d) and (p) of section 214 of the Act, section 101(a)(15)(K)(i) of the Act provides nonimmigrant classification for an alien who "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

II. ANALYSIS

The only issue presented on appeal is whether the Petitioner has established that fulfilling the requirement of meeting his fiancée within the two years before filing Form I-129F would have imposed sufficient hardship to qualify him for discretionary waiver of the requirement. The Petitioner contends that he inherited responsibility for the family business due to his father's health problems, was unable to travel overseas as planned during the relevant timeframe, and would have incurred extreme hardship in doing so. While the record documents a serious medical condition and associated treatment, we find the evidence does not demonstrate the Petitioner was unable without suffering extreme hardship to visit the Beneficiary as statutorily required.

The Petitioner filed the fiancé(e) petition with U.S. Citizenship and Immigration Services (USCIS) on May 1, 2015. Therefore, the Petitioner and the Beneficiary were required to have met in person between May 1, 2013 and May 1, 2015. 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. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of a petitioner's circumstances. Generally, we look at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of a 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.

In response to a request for evidence issued by the Director, the Petitioner submitted evidence including records regarding his father's medical condition and letters attesting that the Petitioner and Beneficiary have met each, albeit outside the two-year period, due to close friendship between their

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families. There is also documentation that the Petitioner's mother and father visited Pakistan in November 2014, although the record is inconclusive concerning whether they were present at the [REDACTED], 2015, betrothal ceremony of their son and his fiancée, which the Petitioner did not attend.

The Director denied the petition, finding that the Petitioner had failed to submit evidence to establish that he and the Beneficiary had met 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-established customs of the Beneficiary's foreign culture or social practice or result in extreme hardship to the Petitioner.

On appeal, the Petitioner claims he was prevented from traveling to Pakistan during the two-year period by the necessity that he assume responsibility for running his family's convenience store business when his father was diagnosed with rectal cancer. In support, he submits a doctor's statement confirming his father's July 2013 cancer diagnosis, surgery, and treatment with chemotherapy and radiation.

The Petitioner filed the Form I-129F on May 1, 2015. The record indicates that the Petitioner's father was diagnosed with rectal cancer on July 22, 2013, and underwent treatment between September 2013 and June 2014 to remove and eradicate the tumor. The record reflects that by November 2014 he had recovered sufficiently to travel to Pakistan with his wife. There is also evidence that the Petitioner's extended family in Pakistan attended a [REDACTED] 2015 engagement ceremony, but the record is silent regarding whether his parents were among the attendees.

Counsel submits a letter asserting that the Petitioner's father owned a convenience store with six employees besides himself and was "totally disabled due to the long period of [c]hemotherapy treatments," "[n]o employee was available to run the store," and without the Petitioner "the store would ... have closed." Although his father's health condition is well-documented, there is no documentation supporting counsel's claims regarding the consequence to the business of the Petitioner making a short visit to Pakistan to meet his fiancée before filing the petition. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

While sensitive that his father's cancer diagnosis represented a hardship to the Petitioner, the record indicates that his father had recovered enough to visit Pakistan over six months before his son filed the petition. The record does not establish that during the entire requisite period, from May 1, 2013 to May 1, 2015, the Petitioner was unable to travel, even for a brief period, to visit the Beneficiary due to his father's medical condition. There is no indication why another of the store's six employees could not run the business for several days to permit the Petitioner to travel and no showing of what work schedule his father resumed after completing his treatment (only his doctor's statement that his patient "has not been able to continue his regular work ... schedule"). We recognize that his father's medical condition affected the Petitioner's ability to travel, but observe

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that the totality of the circumstances does not establish that he was unable to fulfill his plans after his father completed his treatment.

The evidence provided by the Petitioner does not meet the requirements specified under section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2) for an exemption from the meeting requirement. The evidence does not establish that compliance with the regulatory requirement would result in extreme hardship to the Petitioner or that compliance would violate strict and long-established customs of the Beneficiary's foreign culture, social culture or religious practice.¹

We therefore find that the Petitioner has not established that he merits a favorable exercise of discretion to exempt him from the two year in-person meeting requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). As further stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition for failure to meet the two year in-person meeting requirement is without prejudice to the filing of a new petition once the Petitioner and the Beneficiary have met in person.

III. CONCLUSION

It is the Petitioner's burden to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of S-K-*, ID# 16282 (AAO May 11, 2016)

¹ Although the Petitioner originally asserted the customary grounds exemption from the two-year meeting requirement, he does not contest on appeal the Director's Denial decision citing information from the [REDACTED] stating that, even though adult Muslim boys and girls are not allowed to date their partners before marriage, "it is permissible for both to see each other in the presence of their families." Denial, August 19, 2015. We note, further, that the Petitioner states he planned to visit his fiancée, but was prevented from doing so by his father's illness.