



U.S. Citizenship
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Services

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FILE: [Redacted]
WAC 04 139 53575

Office: CALIFORNIA SERVICE CENTER Date:

AUG 05 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 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:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Pakistan, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the petition after determining that the petitioner had failed to provide credible evidence that he and the beneficiary had personally met within the two-year period that preceded the filing of the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated December 2, 2004.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C. § 1184(d), 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 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 a period of ninety days after the alien's arrival. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting 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.

The regulation at section 214.2 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.

Although the AAO notes that the director's request for evidence identifies the date of filing as April 19, 2004, the record shows the petitioner to have filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on April 15, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on April 15, 2002 and ended on April 15, 2004.

At the time of filing, the petitioner indicated that he had previously met the beneficiary but did not state whether that meeting had occurred during the two years immediately preceding his filing of the Form I-129F. In response to the director's request for evidence, he submitted two undated photographs of himself and the beneficiary. The director found this evidence insufficient to establish a meeting between the petitioner and beneficiary during the period April 15, 2002 to April 15, 2004.

On appeal, the petitioner states that he traveled to Pakistan on September 17, 2004 to meet the beneficiary and submits copies of pages from his U.S. passport showing a Pakistani exit stamp dated October 1, 2004 and two new undated photographs of himself and the beneficiary.

The petitioner has indicated that he met the beneficiary prior to filing the Form I-129F and also in September 2004. However, he has not submitted the documentary evidence necessary to establish a meeting during the two years immediately preceding his filing of the Form I-129F and his September 2004 travel does not meet statutory requirements. The September 2004 trip documented by the beneficiary on appeal does not fall within the two-year period immediately preceding his filing of the Form I-129F as required by section 214(d) of the Act. Accordingly, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new I-129F petition on the beneficiary's behalf so that a new two-year period in which the parties are required to have met will apply.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.