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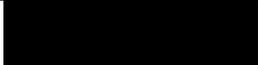


U.S. Citizenship
and Immigration
Services

DG



FILE:



WAC 03 194 54049

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 26 20**

IN RE:

Petitioner:

Beneficiary



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 of the Administrative Appeals Office 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 Vietnam, as the fiancé 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 not offered documentation evidencing that she and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. *Decision of the Director*, undated.

Section 101(a)(15)(K) of 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.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on June 18, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on June 18, 2001 and ended on June 18, 2003.

In response to the director's request for evidence and additional information, the petitioner submitted a copy of a valid United States passport identification page and visa authorization for Vietnam valid from June 29, 2003 until September 29, 2003; a copy of a passenger ticket receipt and baggage check claim; four letters of correspondence between the petitioner and the beneficiary; 10 undated photographs of the petitioner and the beneficiary together; used calling cards and copies of money wire transfers from the petitioner to the beneficiary.

On appeal, the petitioner states that she has submitted her airline ticket stubs reflecting departure to Vietnam on December 23, 2002 and return to San Francisco on February 4, 2003. *Form I-290B*, dated March 31, 2004. The petitioner's representative indicates that immigration officials did not stamp the petitioner's passport when she reentered the United States during February and July 2003. *Letter from [REDACTED]* dated March 29, 2004. The AAO notes that the Form G-28 lists the petitioner's representative as an accredited representative however the Executive Office of Immigration Review does not recognize the named individual as an accredited representative. The AAO considers all of the submitted documentation in rendering a decision on the petitioner's appeal; however, a decision is provided to the petitioner and not the named representative.

The evidence provided by the petitioner fails to demonstrate that the petitioner and the beneficiary met between June 18, 2001 and June 18, 2003 as required under section 214(d) of the Act. While the record contains a passenger ticket receipt issued to the petitioner on December 20, 2002, the record fails to evidence that the petitioner traveled to Vietnam during December 2002 as contended by the petitioner's representative. In the absence of substantiating documentation, the evidence of record is inconclusive as to whether or not the petitioner and beneficiary met as required. The AAO notes that a meeting between the petitioner and the beneficiary after the filing of the Form I-129F petition does not serve to satisfy the meeting requirement. Further, the record does not establish that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, 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 Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

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

ORDER: The appeal is dismissed.