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U.S. Citizenship
and Immigration
Services

D6

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FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

WAC 04 009 53146

JAN 27 2005

IN RE:

Petitioner:

[Redacted]

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:

[Redacted]

PHILIC COPY

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 India, 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 and the beneficiary had not personally met within two years before the date of filing the petition, as required by section 214(d) of the Act, and that the petitioner had not established that compliance with the meeting 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 or social practice. *Decision of the Director*, dated May 5, 2004.

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 October 14, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 14, 2001 and ended on October 14, 2003.

In response to the director's request for evidence establishing that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, the petitioner submitted a certificate from a priest/religious minister stating that according to custom and tradition, "a girl does not meet or Hang [sic] around with boys until the ritualistic marriage Ceremony." *Letter from Pundit Girwar Maharaj*, undated.

On appeal, counsel states that the decision of the director is apparently erroneously based on information relating to Islamic law without reference to any Indian Hindu teachings and customs. *Form I-290B*, undated. Counsel submits an affidavit of the petitioner and information from the Library of Congress regarding marriages in India.

The submitted information from the Library Congress indicates that different marriage customs are followed in different regions of India. *Library of Congress Country Statistics, India*, printed on May 25, 2004 ("Essentially, India is divided into two large regions with regard to Hindu kinship and marriage practices, the north and the south. Additionally, various ethnic and tribal groups of the central, mountainous north, and eastern regions follow a variety of other practices."). Counsel highlights a portion of the report stating that, in cities, couples are sometimes allowed to meet under chaperoned circumstances. *Id.* While the petitioner's affidavit contends that she is not allowed to personally meet the beneficiary prior to their marriage, the letter submitted by the petitioner from her priest does not indicate that the petitioner and the beneficiary were prohibited from meeting during the required two-year period; the letter states only that "a girl does not meet or Hang [sic] around with boys until the ritualistic marriage Ceremony." *Letter from Pundit Girwar Maharaj*. The record fails to demonstrate that the petitioner and the beneficiary could not meet one another in the presence of family members, an option identified in the materials provided by counsel.

The AAO acknowledges that the decision of the director appears to erroneously rely on information relating to the Islamic religion rather than the Hindu faith.

Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between October 14, 2001 and October 14, 2003. The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, the

AAO does not find 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.