



U.S. Citizenship
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Services

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FILE: [Redacted]
EAC 04 134 52660

Office: VERMONT SERVICE CENTER

Date: NOV 22 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

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

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Cape Verde, 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 acting director denied the petition after determining that the petitioner had failed to establish that he and the beneficiary had personally met within the two-year period preceding the date of filing the petition, as required by section 214(d) of the Act. She also found that the petitioner had failed to establish that compliance with the meeting requirement would have constituted an extreme hardship for him. The director further noted that the petitioner had not submitted all required documents. *Decision of the Acting Director*, dated June 28, 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.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on April 1, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on April 1, 2002 and ended on April 1, 2004.

At the time of filing, the petitioner indicated that he had not previously met the beneficiary because of the cost involved in traveling to Cape Verde. In a July 27, 2004 statement, submitted on appeal, the petitioner asserts that traveling to meet the beneficiary would constitute a financial hardship for him. He further contends that he is unable to travel as he has just started new employment. Subsequent to his appeal, the beneficiary provided evidence of a February 2005 trip to Cape Verde to meet his fiancée. However, the petitioner's meeting with the beneficiary did not occur within the specified period of April 1, 2002 to April 1, 2004. Accordingly, the record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

The record also fails to establish that complying with the meeting requirement would have constituted an extreme hardship for the petitioner. The financial commitments required for travel to a foreign country are a common concern for many individuals who wish to file Form I-129Fs and do not, therefore, constitute extreme hardship. Further, although the petitioner claims his new employment prevents him from traveling to meet the beneficiary, the AAO notes that such employment appears to have begun subsequent to the filing of the Form I-129F and is, therefore, not a factor in the petitioner's failure to meet the beneficiary during the specified period. Moreover, while the petitioner and the beneficiary are required to meet during the two-year period immediately preceding the filing of the Form I-129F, that meeting need not occur in the beneficiary's home country. The record on appeal does not, however, demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Cape Verde, including the beneficiary traveling to meet the petitioner in the United States. Taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find that compliance with the meeting requirement would have resulted in extreme hardship for him or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that exempt a petitioner from the meeting requirement of section 214(d) of the Act. 8 C.F.R. § 214.2(k)(2). Therefore, the appeal will be dismissed.

As noted in the director's denial, the petitioner also failed to submit a copy of a completed Form G-352A for the beneficiary, as required by the filing instructions for the Form I-129F. Pursuant to 8 C.F.R. § 103.2(a)(1):

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations in this chapter requiring its submission Each application or petition must be accompanied by the documents required by the particular section of the regulations under which submitted.

Therefore, the petitioner has failed to comply with the filing requirements for a Form I-120F and the appeal will be dismissed for this reason as well.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. As the petitioner and beneficiary have met, the petitioner may file a new Form 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.