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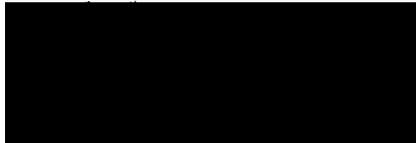
FILE: 
EAC 04 040 50074

Office: VERMONT SERVICE CENTER

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:



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 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 Yemen, 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 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 violate strict and long-established customs of the beneficiary's foreign culture or social practice. *Decision of the Acting Director*, dated April 26, 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 November 25, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 25, 2001 and ended on November 25, 2003.

In response to the director's request for evidence and additional information, the petitioner submitted affidavits and a document translated as a marriage certificate for a marriage by proxy between the petitioner and the beneficiary.

On appeal, counsel states that the translation previously submitted is incorrect and that the submitted certificate is a pre-marriage certificate indicating that the petitioner and the beneficiary are engaged. Counsel asserts that the parties are not yet married and therefore he requests that the petition be adjudicated for classification of the beneficiary as the petitioner's fiancée. *Form I-290B*, dated May 25, 2004.

The AAO notes that the decision of the acting director found that although the petitioner and the beneficiary had been married by proxy per the translation originally submitted, CIS would not recognize the marriage as valid because it had not been consummated. *Decision of the Acting Director*. The acting director concluded that since the marriage could not be recognized, "it is possible for the beneficiary to qualify as [the petitioner's] fiancée." *Id.* The issue on appeal, therefore, is the failure of the petitioner and the beneficiary to comply with the meeting requirement under section 214(d) of the Act and not their current marital status, as contended by counsel.

The AAO acknowledges the beneficiary's assertion that cultural custom dictates that the petitioner and the beneficiary not meet until the day of marriage. *See Translation of Personal Acknowledgement*, dated May 13, 2004. Counsel submits an acknowledgement from a tribal leader indicating that the bride and groom should not see each other until their marriage. *See Translation of Tribal Leader Acknowledgement*, dated May 13, 2004. The letter submitted by counsel indicates that the petitioner and the beneficiary should not see one another prior to their marriage, however a previously submitted letter from the Imam of the Alhuda Islamic Center states only that that the petitioner and the beneficiary are not allowed to be alone together until the marriage ceremony is conducted. *Letter from Imam Hassan Assaf*, dated February 27, 2004. Citizenship and Immigration Services has experience with similar applications and relies on information provided by Imam Islamic Foundation of North America, which states,

It is declared that according to Islamic Law and practices, any adult Muslim boy or girl are not allowed to date or meet his/her partner before marriage. However, for

finalizing the decision of marriage, it is permissible for both to see each other in the presence of their families.

The record fails to demonstrate that the petitioner and the beneficiary could not meet one another without offending cultural custom in order to comply with the meeting requirement.

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.