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U.S. Citizenship
and Immigration
Services

Db

SEP 02 2005
Date:

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

WAC 04 059 52946

IN RE:

Petitioner:

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 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 sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Mexico, 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*, dated July 20, 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 December 29, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 29, 2001 and ended on December 29, 2003.

In response to the director's request for evidence and additional information, the petitioner stated that she was with the beneficiary in Mexico between December 16, 2003 and January 8, 2004. In support of this assertion, the petitioner submitted two Mexicana airline baggage tags to Los Angeles International Airport, dated January 8, 2004; a boarding pass, dated January 8, 2004 and a Mexican bus pass issued in the petitioner's name, dated November 22, 2003.

On appeal, the petitioner states that she has known the beneficiary for almost 20 years. She indicates that she visited the town where the beneficiary grew up because her uncle owned land there and her mother sent her there "to enjoy the change of scenery." *Letter from Luz Adriana Lopez*, dated August 10, 2004.

The travel documentation submitted by the petitioner in response to the director's request for evidence and additional information establishes that the petitioner and the beneficiary met during December 2003. The AAO finds, therefore, that the evidence on appeal establishes compliance with the meeting requirement under section 214(d) of the Act. The appeal will be sustained.

The AAO notes that the record on appeal contains discrepancies regarding the date of birth of the petitioner. See Copy of Birth Certificate of [REDACTED] dated April 1, 1980 (identifying the petitioner's date of birth as December 1, 1979), *contrast* Question 4A, Form I-129F, dated December 29, 2003 (identifying the petitioner's date of birth as April 1, 1990). The AAO notes that the petitioner will need to rectify this discrepancy in order for the beneficiary's visa to be processed.

ORDER: The appeal is sustained and the application is approved.