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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

WAC 05 016 50709

Office: CALIFORNIA SERVICE CENTER

Date: JAN 20 2006

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 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 petition will be approved.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, 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 director denied the petition after determining that the record did not establish that the petitioner and beneficiary had personally met within the two-year period immediately preceding the date of filing of the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated April 20, 2005.

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 October 14, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 14, 2002 and ended on October 14, 2004.

At the time of filing, the petitioner indicated that he and the beneficiary had met in April 2004. In support of his claim, the petitioner submitted a translated copy of an April 9, 2004 "request for verification on our engagement" made to the People's Committee of [REDACTED] signed by the petitioner and the beneficiary; and a photograph of himself and the beneficiary at their engagement party, standing in front of a curtain on which an April 2004 date is affixed. In response to the director's request for evidence, the petitioner provided copies of a China Airlines ticket stub showing his name and an April 2 flight into Ho Chi Minh City and a Vietnamese arrival document that bears his signature and indicates an April 2, 2004 arrival in Vietnam. On appeal, the petitioner offers no additional evidence, but states that the documentation he previously submitted establishes his compliance with the meeting requirement of section 214(d) of the Act. The AAO agrees.

Although the director concluded that the evidence submitted by the petitioner did not prove that he had met the beneficiary within the specified period, the AAO finds the cumulative weight of the documentation submitted by the petitioner – the April 9, 2004 engagement statement with his signature, his photograph with the beneficiary, his airline ticket stub dated April 2, and the Vietnamese arrival document showing his April 2, 2004 arrival in Vietnam – to be sufficient to establish that he and the beneficiary met in Vietnam during April 2004. Therefore, the petitioner is found to have complied with the meeting requirement of section 214(d) of the Act. The appeal will be sustained.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.