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U.S. Citizenship
and Immigration
Services

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AUG 14 2007

FILE:

LIN 06 168 52281

Office: CALIFORNIA SERVICE CENTER

Date;

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.

Robert P. Wiemann, Chief
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 Nigeria, 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 filing of the petition, as required by section 214(d) of the Act. She further determined that the record did not establish a basis on which to exempt the petitioner from this requirement. *Decision of the Director*, dated January 19, 2007.

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 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 May 17, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 17, 2004 and ended on May 17, 2006.

At the time of filing, the petitioner indicated that he had met the beneficiary in Nigeria in December 2004. In support of his assertion, the petitioner submitted a copy of his hotel receipt in Nigeria dated December 4, 2004 to December 10, 2004; copies of his travel itinerary, airline tickets, and baggage claim receipts showing travel to Nigeria from December 4, 2004 to December 10, 2004; and a copy of his passport with Nigerian entry and exit stamps dated December 4, 2004 and December 10, 2004. In his Form I-129F, the petitioner stated that he had met within the two years preceding the filing of the application, as he had met with the beneficiary in Nigeria in December 2004. At the time of filing, the evidence of record established that the petitioner had complied with the meeting requirement of section 214(d) of the Act, as his December 2004 meeting with the beneficiary in Nigeria occurred within the two-year time period specified above – May 17, 2004 to May 17, 2006. The AAO observes that the Director found that the petitioner had met with the beneficiary in December 2004. As such, the Director erred in concluding that the December 2004 meeting did not fall within the May 17, 2004 – May 17, 2006 time period.

On appeal, the petitioner states that his December 2004 meeting with the beneficiary in Nigeria falls within the two-year time period. *Form I-290B*. The petitioner submitted photographs of himself with the beneficiary. *See photographs*. The evidence of record has established that the petitioner has complied with the meeting requirement of section 214(d) of the Act. Therefore, 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.