



U.S. Citizenship
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JAN 31 2007

FILE:

WAC 06 053 50878

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:

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 dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Pakistan, 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 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. He further determined that the record did not establish a basis on which to exempt the petitioner from this requirement. *Decision of the Director, dated July 3, 2006.*

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 December 7, 2005. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 7, 2003 and ended on December 7, 2005.

At the time of filing, the petitioner indicated that she and the beneficiary had not met during the designated period, but had known each other since 1951, as their families were neighbors in Pakistan. In 1971 they were engaged to be married; however, the engagement was broken off in 1977 due to pressure from the beneficiary's family. In 1987 the petitioner came to the United States. In January 2005 the beneficiary re-established contact with the petitioner through phone calls and their relationship was rekindled.

On appeal, the petitioner states that she would suffer extreme hardship if she had to meet with the beneficiary, as she has a great fear of flying. She also suffers from the medical conditions of hyperthyroidism, generalized anxiety disorder, and major depression which contribute to her inability to fly. The AAO notes that the petitioner has submitted letters from licensed medical professionals documenting her health issues. The petitioner is also concerned that if she returned to Pakistan, her family would prevent her from returning to the United States. The petitioner asserts that the beneficiary has tried to obtain a visa to Canada or Mexico, but was unable to do so. The AAO notes that the record includes an October 2005 letter from the Canadian High Commission denying the beneficiary a temporary resident visa to Canada and an email from the Embassy of Mexico in Iran providing information on the visa application procedures to Mexico for Pakistani nationals. The AAO finds there is nothing in the record from the Government of Mexico to support the petitioner's claim that the beneficiary applied for and was denied a temporary visa to Mexico. While the AAO finds the petitioner to have established that she has known the beneficiary for many years, she has not, however, established compliance with the meeting requirement of section 214(d) of the Act, as it relates to the instant petition.

The petitioner's meetings with the beneficiary occurred many years before she filed the Form I-129F on behalf of the beneficiary. Therefore, they do not satisfy section 214(d) of the Act. The AAO acknowledges the petitioner's fear of flying and medical conditions that contribute to this fear, but it notes that section 214(d) of the Act does not require the petitioner to meet her fiancé in Pakistan. While the petitioner has presented evidence that she and her fiancé have explored meeting in Canada and have learned about the visa process in Mexico, the record does not demonstrate that the petitioner and beneficiary exhausted all attempts to meet in person at a location that would have eliminated or minimized the need for the petitioner to travel. A single attempt to obtain a Canadian nonimmigrant visa is not proof that the beneficiary could not have traveled to meet the petitioner in the United States or a neighboring country during the specified period. Additionally, in her initial filing, the petitioner stated that she might be able to fly if she had a family member to accompany her. Counsel asserts that none of the petitioner's family members wish to help her, for they would be disobeying the petitioner's parents. While the AAO acknowledges these difficulties, it finds the petitioner's claim to have a phobia of flying to be undermined given her statement. The petitioner has offered evidence to establish that compliance with the

meeting requirement during the specified period would have constituted an extreme hardship for her or that such a meeting would have violated the customs of the beneficiary's culture or social practice. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Should the petitioner and beneficiary meet, she may file a new I-129F petition on the beneficiary's behalf so that a new two-year meeting period 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.