

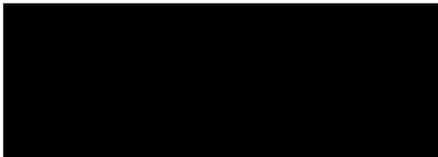
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U.S. Citizenship
and Immigration
Services

DG



FILE: [REDACTED]
WAC 05 084 52406

Office: CALIFORNIA SERVICE CENTER

Date: JUN 18 2007

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal on June 29, 2006 based on the petitioner's failure to submit evidence referenced in the Notice of Appeal to the Administrative Appeals Office, Form I-290B, received September 12, 2005. Contrary to the AAO finding, the petitioner had submitted the evidence as of October 2005. Therefore, the AAO reopens this matter on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for the purposes of entering a new decision. The previous decision will be withdrawn. 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 Peru 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 petitioner had failed to establish that he and the beneficiary had personally met within the two-year period preceding the filing of the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated August 11, 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 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 March 10, 2005. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on March 10, 2003 and ended on March 10, 2005.

At the time of filing, the petitioner indicated that he had met the beneficiary while she was interning in Florida, but did not identify whether that meeting had occurred within the specified period. In response to the director's request for evidence, he submitted two undated photographs of himself with the beneficiary.

On appeal, the applicant submits a certificate that documents his marriage to the beneficiary in a religious ceremony in Arequipa, Peru on July 24, 2004,¹ a picture of himself and the beneficiary on their wedding day, an airline ticket receipt in his name indicating he traveled from Lima, Peru to Arequipa, Peru, the beneficiary's city of residence, on July 16, 2004, an airline baggage claim receipt in his name showing his destination as Arequipa and a stamp indicating payment of an airport fee in Lima, Peru. The AAO finds this documentation to establish that the petitioner and beneficiary met within the two-year period preceding the filing of the petition. Accordingly, the petitioner has complied with the meeting requirement of section 214(d) of the Act. The AAO's previous decision will be withdrawn and the petition will be approved.

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 previous decision is withdrawn. The petition is approved.

¹ The petitioner's assertion that his marriage to the beneficiary in a religious ceremony is not recognized as a legal marriage by the Peruvian government is supported by information electronically available from the Department of State at <http://travel.state.gov/visa/reciprocity/Country%20Folder/P/Peru.htm>. Accordingly, for the purposes of filing the Form I-129F, the beneficiary is a fiancée under section 101(a)(K)(i) of the Act not a spouse under section 101(a)(K)(ii).