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U.S. Citizenship
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JUN 29 2007

FILE:



Office: VERMONT SERVICE CENTER

Date:

WAC 06 075 51132

IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for Alien Fiancé(e) Pursuant to § 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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont 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 Nigeria, as the fiancée of a United States citizen pursuant to § 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 he and the beneficiary had personally met within two years before the date of filing the petition, as required by § 214(d) of the Act, and that the petitioner had not established that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

On appeal, the petitioner provides documentation establishing that he and the beneficiary met personally after he filed the fiancée petition. He also reiterates that he was unable to visit his fiancée prior to the filing date, in part due to his educational commitments, and also because he did not divorce his previous spouse until December 2005. The AAO has reviewed the entire record and concurs with the director's decision.

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 § 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 August 31, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 31, 2004 and ended on August 31, 2006. Instead, the petitioner wrote that they maintained a boyfriend-girlfriend relationship from 1986 to 1997, many years prior to the filing date. The evidence also establishes that they met in person between November 17 and December 8, 2006, after the filing date. Thus, the evidence of record does not establish that the petitioner and the beneficiary met as required by § 214(d) of the Act. The petitioner describes temporary circumstances that caused him delays in meeting his fiancée; however, taking into account the factors that the petitioner has presented, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner. It has not been asserted that the meeting requirement would violate strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* §291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

ORDER: The appeal is dismissed.