



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



D6

FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 16 2007

EAC 06 021 51803

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 Acting Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Afghanistan, 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 Acting 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 Acting Director*, dated February 23, 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 October 27, 2005. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 27, 2003 and ended on October 27, 2005.

At the time of filing, the petitioner indicated she had not met the beneficiary. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act. The petitioner included in the record a statement from [REDACTED] that according to customs prevalent in Afghanistan for centuries and the Afghans' understanding of Islamic Law, a would-be couple cannot meet in person until they are officially married by a religious authority. *Statement from [REDACTED] Mustafa Center*, dated September 9, 2005. The people of Afghanistan, especially the southern region, are known worldwide for their strict adherence to their customs. *Id.* The statement further noted that any effort by the petitioner to meet the beneficiary would not only violate tribal customs, but will most probably result in severe resentment by the family of the beneficiary. *Id.* The petitioner also submitted a statement from a U.S. citizen who is originally from Afghanistan confirming that in Afghan culture, particularly among those individuals from the conservative southern provinces, a couple is not allowed to meet each other in person until the official religious marriage ceremony takes place. *Statement from [REDACTED]*, dated September 23, 2005.

In response to the Acting Director's request for evidence, the petitioner stated that after the beneficiary receives his visa, she and her family would travel to Pakistan to celebrate the engagement with the family of the beneficiary. *Statement from the petitioner*, dated January 10, 2006. She noted that she would not come into contact with the beneficiary and would travel back to the United States separately from him. *Id.* The petitioner submitted a statement by an Imam describing the Muslim engagement process in the Kandahar region and the Islamic faith Nikah religious marriage ceremony. *Statement from [REDACTED] Mustafa Center*, dated January 3, 2006. This statement notes that Muslims in and from Kandahar, Afghanistan believe that meeting your husband or wife before marriage would be a violation of strict and long established cultural practices. *Id.*

On appeal, the petitioner stated that meeting the beneficiary would violate strict and long established customs of their foreign culture or social practice and that the original and formal engagement took place on June 28, 2005 in Pakistan where her family presented the family of the beneficiary with an offering of sweets. *Statement from the petitioner*, dated March 20, 2006. The petitioner submitted photographs of herself with her family and of her father with the beneficiary's brother at the second celebration of her engagement which occurred in the United States on September 17, 2005. *Id.* She also submitted a letter from her father stating that both he and the father of the beneficiary prohibit her from meeting with the beneficiary prior to their wedding day. *Statement from [REDACTED]*, dated March 1, 2006. In this letter, the petitioner's father stated that it is strictly against his and the family of the beneficiary's long established cultural beliefs to have the petitioner meet her fiancé subsequent to their engagement and prior to their marriage. *Id.*

The Acting Director stated that the description of the Muslim engagement and wedding ceremonies provided by [REDACTED] did not expressly forbid a meeting between the prospective bride and groom. *Decision of the Acting Director*, dated February 23, 2006. The Acting Director went on to find that no statements from the beneficiary's religious or cultural communities, or a recognized cultural/anthropological organization substantiated that the beneficiary is a member of an identified culturally distinct or unique religious Islamic social order. *Id.* The AAO finds that the Acting Director has erred. The [REDACTED] specifically stated that Muslims in and from Kandahar, Afghanistan believe that meeting one's husband or wife before marriage would be a violation of strict and long established cultural practices. *Statement from [REDACTED] Mustafa Center*, dated January 3, 2006. The beneficiary was born in Kandahar, Afghanistan, as were his parents. *Form I-129F; Form G-325A for the beneficiary*. Additionally, the Acting Director failed to acknowledge the statement from [REDACTED] of the Mustafa Center that the people of Afghanistan, especially those from the southern region, are known for their strict adherence to their customs and that a would-be couple cannot meet in person until they are officially married by a religious authority. *Statement from [REDACTED] Mustafa Center*, dated September 9, 2005. The Acting Director has placed an added requirement upon the beneficiary to show that he is a member of an identified culturally distinct or unique religious Islamic social order. The AAO finds this added requirement to be legally unsupported by the plain language of 8 C.F.R. § 214.2(k)(2).

The AAO notes that Citizenship and Immigration Services has experience with Form I-129F petitions filed by and for individuals who practice the Muslim faith and relies on information provided by Imam Islamic Foundation of North America, which states,

It is declared that according to Islamic Law and practices, any adult Muslim boy or girl are not allowed to date or meet his/her partner before marriage. However, for finalizing the decision of marriage, it is permissible for both to see each other in the presence of their families.

The evidence of record does not establish that the petitioner and the beneficiary met as required. The AAO finds that while the petitioner has established that she and the beneficiary are now prohibited from meeting prior to marriage due to the beneficiary's strict and long-established customs, she has not established that she and the beneficiary were unable to see one another at the formalizing of their engagement on June 28, 2005, a meeting that would have satisfied the section 214(d) requirement of the Act. The record contains no proof that the beneficiary's culture and social practice also prevented him from seeing the petitioner at the time of their formal engagement, a meeting that the Imam Islamic Foundation of North America indicates is not proscribed by Islamic law and practice. Therefore, the petitioner has failed to establish that she was unable to meet the beneficiary during the two-year period that immediately preceded her filing of the instant petition. Accordingly, the appeal will be dismissed.

The denial of the petition is without prejudice. Should the petitioner again file a Form I-129F, a new two-year meeting period would 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.