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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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DG

FILE:

WAC 07 277 52971

Office: CALIFORNIA SERVICE CENTER

Date: DEC 05 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom, 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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Iran, 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 petitioner failed to establish that she and the beneficiary met within the two-year period immediately preceding the filing of the petition, as required under section 214(d) of the Act or that such a meeting would have constituted an extreme hardship or violated the customs of the beneficiary's culture or social practice. *Decision of the Director*, dated April 8, 2008.

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 September 20, 2007. Therefore, the petitioner and the beneficiary were required to have met during the period that began on September 20, 2005 and ended on September 20, 2007.

At the time of filing, the petitioner indicated that she and the beneficiary are first cousins and grew up together. She states that their engagement has the support of their parents and elders and she submits photographs of herself with the beneficiary as well as a copy of her U.S. passport. *Form I-129*, dated September 17, 2007. The petitioner's U.S. passport shows an entry visa for Pakistan, dated August 4, 2005 and valid until August 3, 2010. Her passport also shows a Pakistani exit stamp from July 6, 2005, an entry stamp for Hong Kong from August 16, 2005, an exit stamp from Hong Kong from August 17, 2005 and a Pakistani entry stamp from August 17, 2005.

On December 6, 2007, the Director requested documentation establishing the date of the petitioner and beneficiary's last meeting during the required period prior to filing. In response to this request the applicant submitted the following documentation: an affidavit from the petitioner, signed by both the petitioner and beneficiary and dated August 30, 2007 affirming the petitioner and beneficiary's engagement; a copy of the beneficiary's passenger ticket and reservation for a Qatar Airlines flight traveling from Helsinki, Finland to Peshawar, Pakistan on June 27, 2007 and returning to Finland on September 6, 2007; and a copy of the beneficiary's Pakistani passport showing an entry stamp to Pakistan on June 28, 2007 and an exit stamp of September 6, 2007.

On appeal, the petitioner states that she was in Pakistan with the beneficiary at the time of their engagement. She states that she was a medical student at the Ayub Medical College in Pakistan from 2003 and was therefore with the beneficiary at the time of their engagement. She states that she and the beneficiary grew up together. *Form I-290B*, dated May 2, 2008. The petitioner submits a certificate from the Ayub Medical College, dated April 26, 2008, stating that the petitioner is a fourth year medical student.

The AAO finds that the petitioner has shown through passport stamps, airline reservations, photographs and signatures that she and the beneficiary met on or around August 30, 2007, which is within the two year time period required under section 214(d) of the Act. Thus, 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 now met that burden.

ORDER: The appeal is sustained.