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

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FILE: MSC 07 072 23624

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 31 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.

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, California 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 Thailand, 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 had met the beneficiary 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 resulted in extreme hardship or violated the customs of the beneficiary's culture or social practice. *Decision of the Director*, dated May 29, 2007.

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 11, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 11, 2004 and ended on December 11, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had previously met because although born in the United States, he lived most of his life in Thailand, moving to the United States in 2000. *Form I-129*, dated December 8, 2006. He states that he and his fiancée have a son, who was born in 2001. *Id.*

On March 16, 2007, the Director requested the following documentation from the petitioner: two passport photographs of the petitioner and beneficiary; Form G-325As for the petitioner and beneficiary; and evidence of a meeting within the two-year period preceding the filing of the petition. The Director also provided instructions related to requesting a waiver if the petitioner and beneficiary had not met during the two-year period as required.

In response to the Director's request for documentation, the petitioner submitted the following: passport photographs of the beneficiary; a Form G-325A for the petitioner; copies of foreign remittances to the beneficiary; a copy of the petitioner's Thai passport showing travel to Thailand in April 2004; a copy of the face page of the beneficiary's passport; a copy of the petitioner's U.S. passport; a travel itinerary and boarding pass from the petitioner's trip to Thailand in April 2004; and photographs of the petitioner, beneficiary and their son together.

On appeal, the petitioner states that he has not been able to visit his fiancée and son in Thailand because he has been taking care of his father who is mentally ill. *Form I-290B*, dated June 13, 2007. In support of these statements, the petitioner submits a letter from his aunt and a letter from his father's doctor.

states that the petitioner's father is 57 years old and suffers from schizophrenia and is receiving treatment with antipsychotic medications. *Letter from* dated June 6, 2007. He states that the father is stable but does have periodic relapses where he requires additional supervision and help with his daily living activities from his son, with whom he lives. *Id.* The petitioner's aunt states that the petitioner cares for his father, who is also her brother and has only been able to travel to Thailand a couple of times because of his father's health. *Letter from* dated June 13, 2007.

The AAO recognizes the difficulties the petitioner faces in regards to caring for his father. However, the record does not contain documentation showing that there are no other family members able to care for the petitioner's father while the petitioner travels to Thailand. Moreover, although section 214(d) of the Act requires a meeting between the petitioner and beneficiary, it does not stipulate that the petitioner must travel to the beneficiary's country of residence. The record on appeal does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Thailand, including, but not limited to the

beneficiary traveling to meet the petitioner in the United States or a bordering country. Moreover, the financial and time commitments required for travel to a foreign country are a common requirement to those filing the Form I-129F petition and do not constitute extreme hardship to the petitioner. Thus, the record does not support a finding that a meeting between the petitioner and beneficiary would have resulted in extreme hardship. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. After the petitioner and beneficiary have met again, the petitioner 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.