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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:

EAC 06 228 50820

Office: VERMONT SERVICE CENTER

Date: MAR 20 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:

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 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 Colombia, 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 record did not establish that the petitioner and beneficiary had met within the two-year period immediately preceding the filing of the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated July 5, 2006.

The AAO notes that the director rejected the applicant's appeal as untimely filed under the regulations at 8 C.F.R. §103.3(a)(2) and 103.5a(b), but finds the director to have erred in reaching this decision. The decision denying the applicant's petition was issued on July 5, 2006, not June 16, 2006, as stated by the director. Accordingly, the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, received by the director on August 3, 2006, is found to be timely filed and will be considered on its merits.

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 3, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 3, 2004 and ended on March 3, 2006.

At the time of filing, the petitioner submitted a flight itinerary from Raleigh, North Carolina to Bogota, Colombia; his airline boarding pass and a Colombian customs declaration from his flight to Colombia; and time-dated photographs of himself and the beneficiary in Colombia in August 2003. Because this meeting did not occur within the specified time period required under section 214(d) of the Act, the Director requested evidence from the petitioner showing that he had met the beneficiary during this specified time period.

In response to the director's request for evidence, the petitioner submitted statements from himself and the beneficiary describing the details of a meeting in May 2006, copies of pages from his passport showing an entry to Colombia on May 19, 2006 and an exit on May 22, 2006, and photographs from the visit.

On appeal, counsel states that the petitioner and beneficiary are in love and have a tentative wedding date set for December 2006. He states that evidence of the petitioner and beneficiary meeting on two occasions has been submitted, but that they were not physically together during the two-year time period from March 3, 2004 to March 3, 2006. Counsel submits copies of e-mails between the petitioner and beneficiary and used calling cards. While the AAO finds the petitioner to have established that he and the beneficiary have met, he has not established compliance with the meeting requirement of section 214(d) of the Act, as it relates to the instant petition.

The petitioner's August 2003 trip to meet the beneficiary occurred seven months before he filed a previous Form I-129F benefiting his fiancée and his May 2006 trip occurred two months after he filed the current Form I-129F on behalf of the beneficiary. Therefore, although he has established that he has met the beneficiary, neither meeting occurred within the two-year time period specified above and does not satisfy section 214(d) of the Act. Further, the petitioner has offered no evidence to establish that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for him or that such a meeting would have violated the customs of the beneficiary's culture or social practice. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. As the petitioner and beneficiary have met, he 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.