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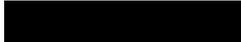
U.S. Citizenship
and Immigration
Services

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FILE:



EAC 03 259 52593

Office: VERMONT SERVICE CENTER

Date: AUG 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 India, 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 petitioner had failed to establish that she and the beneficiary had personally met within the two-year period preceding the date of filing the petition, as required by section 214(d) of the Act. She further found that the petitioner had failed to prove she and the beneficiary should be exempted from that requirement. *Decision of the Acting Director*, dated May 12, 2004.

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 at section 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 September 20, 2003. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on September 20, 2001 and ended on September 20, 2003.

At the time of filing, the petitioner included a statement from the beneficiary indicating that their last meeting occurred in 1999, prior to the two-year meeting period just specified. On November 18, 2003, the acting director issued a request for evidence asking the petitioner to submit evidence that either a meeting had occurred between September 20, 2001 and September 20, 2003 or that such a meeting would have posed an extreme hardship to her or would have violated the customs of the beneficiary's culture or social practice. In response, the petitioner submitted several letters indicating that she had not been able to travel to India because of her responsibilities as a teacher and a parent, and, in November and December of 2003, because of illness. The acting director found this evidence insufficient to establish that a meeting between the petitioner and beneficiary would have imposed an extreme hardship on the petitioner.

On appeal, the petitioner again states that her duties as a parent precluded her travel to India from September 20, 2001 to September 20, 2003. She also provides documentation of a February 2004 trip to India to meet the beneficiary. However, as the February 2004 meeting with the beneficiary does not fall within the two-year period that preceded the filing of the Form I-129F, it does not satisfy the meeting requirement of section 214(d) of the Act and will not be considered in these proceedings.

The petitioner did not meet the beneficiary during the two-year period immediately preceding her filing of the Form I-129F. She has stated that her personal responsibilities and ill health prevented her travel to India to meet the beneficiary. However, neither the petitioner's responsibilities nor her illness can establish that meeting the beneficiary during the stipulated period would have constituted an extreme hardship for her. The childcare and employment responsibilities cited by the petitioner are similar to those of many individuals who wish to file Form I-129Fs and are contemplating overseas travel. As a result, they do not establish extreme hardship. Further, the November-December 2003 illness documented by the petitioner falls outside the specified meeting period and, therefore, cannot be considered relevant to the petitioner's claim that a meeting with the beneficiary between September 20, 2001 and September 20, 2003 would have created an extreme hardship on her.

The AAO also notes that while section 214(d) of the Act requires a meeting between the petitioner and the beneficiary occur in the two years immediately preceding the filing of the Form I-129F, it does not require the petitioner to travel to the beneficiary's home country. The record on appeal does not, however, demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to India, including the beneficiary traveling to meet the petitioner in the United States or a country bordering the United States. Taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find that compliance with the meeting requirement would have resulted in extreme hardship to the petitioner or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that exempt a petitioner from the requirements at 8 C.F.R. § 214.2(k)(2). Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new I-129F petition on the beneficiary's behalf so that a new two-year period in which the parties are required to have met 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.