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U.S. Citizenship
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FEB 22 2005

[Redacted]

FILE: [Redacted]
EAC 04 034 55706

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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. Wemmann, 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 sustained.

The petitioner is a naturalized 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 petitioner had not offered documentation evidencing that she and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act and that the petitioner had not established that compliance with the meeting requirement would result in extreme hardship to the petitioner or violate strict and long-established customs of the beneficiary's foreign culture or social practice. *Decision of the Acting Director*, dated April 7, 2004.

Section 101(a)(15)(K) of 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 November 19, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 19, 2001 and ended on November 19, 2003.

In response to the acting director's request for evidence and additional information, counsel submitted a letter requesting a waiver of the two-year meeting requirement stating that the petitioner is an American citizen and is not able to travel to Afghanistan owing to security concerns. Counsel further indicated that the engagement between the petitioner and the beneficiary has been arranged in accordance with the traditions of Americans of Afghani descent. Counsel states that the petitioner and the beneficiary met in November 1999.

On appeal, counsel submits an affidavit of the President of the Afghan Islamic National Community Association and a statement pursuant to 8 C.F.R. § 103.5(a)(1)(iii)(C).

The AAO acknowledges counsel's assertions regarding the customs associated with formal engagement in the Afghan American tradition as the basis for the granting of a waiver under 8 C.F.R. § 214.2(k)(2). The AAO notes that these customs standing alone do not prohibit compliance with the meeting requirement under section 214(d) of the Act. However, the petitioner's inability to travel to Afghanistan coupled with the beneficiary's inability to depart from Afghanistan is not within the power of the petitioner to control or change and the duration of these circumstances cannot be determined with any degree of certainty. The AAO finds, therefore, that the petitioner is exempted from the two-year meeting requirement as the petitioner has established that compliance would result in extreme hardship to the petitioner pursuant to 8 C.F.R. § 214.2(k)(2).

The evidence on appeal establishes compliance with the requirements established by statute under sections 101(a)(15)(K) and 214(d) of the Act and by regulation at 8 CFR § 214.2(k). The petitioner provides satisfactory evidence of a bona fide relationship and intention to marry between the petitioner and the beneficiary. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.