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U.S. Citizenship
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FILE:

WAC 06 086 51742

Office: CALIFORNIA SERVICE CENTER

Date:

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.

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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of India, 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 personally met within the two-year period immediately preceding the filing of the petition, as required by section 214(d) of the Act. He further determined that the record established that the petitioner did not require an exemption from this requirement. *Decision of the Director, dated August 11, 2006.*

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 January 23, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on January 23, 2004 and ended on January 23, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had never met. The petitioner indicated that this was an arranged marriage and he was not supposed to meet his fiancée in person before the marriage. *Statement from the petitioner, dated January 10, 2006.* In response to the Director's request for evidence, the petitioner re-submitted the January 10, 2006 statement he wrote. He also submitted a letter he wrote dated June 26, 2006, an affidavit from the beneficiary, a statement from the head [REDACTED], India explaining the marriage norms in Islamic law, a copy of pages from the petitioner's passport showing a trip to Bangkok, Thailand in May 2006, an e-ticket confirmation, receipts for lodging and purchases during the travel dates, the beneficiary's Indian passport showing entry into Thailand in May 2006, the beneficiary's airline ticket and confirmation, boarding passes, and several photographs of the petitioner and beneficiary together along with other family members.

On appeal, the petitioner states that despite long established customs and traditions, he met with the beneficiary with their families' approval.

While the AAO finds the petitioner to have established that he traveled to Bangkok, Thailand in May 2006 and that he met with the beneficiary during that time, he has not, however, established compliance with the meeting requirement of section 214(d) of the Act, as it relates to the instant petition.

The petitioner's trip to meet the beneficiary occurred approximately four months after he filed the Form I-129F on behalf of the beneficiary. Therefore, although he has established that he has met the beneficiary, this meeting did not occur within the two-year time period specified above – January 23, 2004 to January 23, 2006 – and does not satisfy section 214(d) of the Act. While 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, he submitted evidence that such a meeting would have violated the customs of the beneficiary's culture or social practice. While the AAO acknowledges this evidence, it also notes that the petitioner subsequently met with the beneficiary, thereby demonstrating that a meeting during the specified period would not 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.