U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 15 2007

WAC 06 232 51640

IN RE: Petitioner:
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:

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.

Ellen C. Johnson

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 Vietnam, as the fiancée of a naturalized 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 did not establish that the petitioner had complied with the requirements under the International Marriage Broker Regulation Act (IMBRA) of 2005, Pub. L. No. 109-162 dated January 5, 2006. *Decision of the Director*, dated November 1, 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.

A petitioner, who applies for benefits on behalf of a beneficiary, must meet the requirements under section 8 C.F.R. § 103.2(b)(1), which states in pertinent part:

> An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation...

On January 5, 2006, the President signed the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006), 8 U.S.C. § 1375a. Title VII of VAWA 2005 is entitled "Protection of Battered and Trafficked Immigrants," and contains Subtitle D, "International Marriage Broker Regulation" (IMBRA). IMBRA provides that a petitioner for a nonimmigrant visa for an alien fiancé(e) (K-1) or alien spouse (K-3) must submit with his or her Form I-129F information on any criminal convictions for any of the following "specified crimes":

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes.
- Crimes relating to a controlled substance or alcohol where the petitioner has been convicted on at least three occasions and where such crimes did not arise from a single act.

If the petitioner indicates that he or she has been convicted by a court or by a military tribunal for one of the specified crimes or Citizenship and Immigration Services (CIS) ascertains through relevant background checks that the petitioner has been convicted, the petitioner will be required to submit certified copies of all court and police records showing the charges and dispositions for every conviction. This is required even if the petitioner's records were sealed or otherwise cleared.

IMBRA imposes limitations on the number of petitions a petitioner for a K nonimmigrant visa for an alien fiancé(e) (K-1) may file or have approved without seeking a waiver of the application of those limitations. If the petitioner has filed two or more K-1 visa petitions at any time in the past, or previously had a K-1 visa petition approved within two years prior to the filing of the current petition, the petitioner must request a waiver. These limitations do not apply to petitioners for a K nonimmigrant visa for an alien spouse (K-3).

A discretionary waiver is available to waive the applicable time and/or numerical limitations if justification exists, except where the petitioner has a history of violent criminal offenses against a person or persons. Factors considered in the discretionary waiver include, but are not limited to:

- Whether unusual circumstances exist (e.g. death or incapacity of prior beneficiary(ies));
- Whether the petitioner appears to have a history of domestic violence;
- Whether it appears the petitioner has a pattern of filing multiple petitions for different beneficiaries at the same time, of filing and withdrawing petitions, or obtaining approvals of petitions every few years.

If the petitioner has a history of violent offenses, the filing limitations may not be waived unless extraordinary circumstances exist in the petitioner's case.

IMBRA requires that a waiver must be approved if the petitioner can establish that he or she:

- Was battered or subjected to extreme cruelty by his or her spouse, parent, or adult child at the time he or she committed the violent offense(s), and
    - Was not the primary perpetrator of violence in the relationship:
    - Was acting in self-defense;
    - Violated a protection order intended for his/her protection; or
    - Committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime committed and the petitioner having been battered or subjected to extreme cruelty.

The provisions of IMBRA apply to all petitions filed on or after March 6, 2006.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with CIS on July 13, 2006. At the time of filing, the petitioner did not submit the evidence mandated by the IMBRA and pursuant to section 101(a)(15)(K)(i) of the Act.

As the petitioner filed the Form I-129F with CIS on July 13, 2006, the petitioner and the beneficiary were required to have met during the period that began on July 13, 2004 and ended on July 13, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had met in Vietnam. In response to the Director's request for evidence, the petitioner submitted a photocopy of his passport showing Vietnamese entry and exit stamps dated February 24, 2004 and March 23, 2004; his naturalization certificate; photographs of himself and the beneficiary; a completed Form G-325A, Biographic Information sheet; and a birth certificate and English translation for the beneficiary.

On appeal, the petitioner stated that he and his fiancée were engaged on March 16, 2004. *Form I-290B.* In support of his assertion, the petitioner submitted engagement photographs of himself with the beneficiary. *Id.*

According to the petitioner's passport, his trip to meet the beneficiary occurred more than two years before 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 – July 13, 2004 to July 13, 2006 – and does not satisfy section 214(d) of the Act. The petitioner did not provide any reasons as to why he failed to meet the beneficiary during the specified time period. The AAO does not find that the petitioner has offered 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. Additionally, the petitioner filed the Form I-129F with CIS on July 13, 2006, subsequent to the enactment of IMBRA. The record on appeal does not indicate that the petitioner has submitted the evidence mandated by IMBRA and pursuant to section 101(a)(15)(K)(i) of the Act. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Should the petitioner and the beneficiary meet again, he may file a new Form I-129F petition on the beneficiary's behalf so that a new two-year meeting period will apply. The AAO notes that the petitioner must also comply with the requirements of the IMBRA.

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.