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U.S. Citizenship
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Services

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[REDACTED]

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 14 2009

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

PETITION: Petition for Alien Fiancé(e) Pursuant to § 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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting 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 India, as the fiancé(e) of a United States citizen pursuant to § 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 because the petitioner failed to establish that she and the beneficiary met in person within the two years immediately preceding the filing of the petition.

On appeal, the petitioner submits a statement and a letter from her mother's former physician.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry. . . .

Section 214(d) of the Act, 8 U.S.C. 1184(d), states in pertinent part that a fiancé(e) petition:

[s]hall 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 U.S. Citizenship and Immigration Services (USCIS) on September 10, 2007. Therefore, the petitioner and beneficiary were required to have met between September 10, 2005 and September 10, 2007.

When she filed the petition, the petitioner responded “no” to the question #18 on the I-129F Petition that asks whether she and the beneficiary had met in person within the two years before the filing of the petition. The petitioner stated that she and her mother had gone to India three years before to meet her fiancé. The petitioner did not request a waiver of the in-person meeting requirement.

The director denied the petition because the petitioner and beneficiary had not met in person during the required time period. On appeal, the petitioner states that she was unable to travel to India during the required period because she was caring for her ill mother who was living with her and dependent on oxygen. The petitioner states that her mother passed away and that her mother would have wanted to see her and the beneficiary marry and be happy. The petitioner also submits a letter from [REDACTED] states that the petitioner’s mother was a patient of his for several years, and asserts, “[the petitioner] took care of her mother, and during the last two years of [the petitioner’s mother’s] life [the petitioner] was unable to travel out of Columbus, Ohio. [The petitioner] was the sole care giver to her mother.”

The petitioner has failed to establish that travel to India during the requisite period should be exempted because of hardship. The evidence regarding the petitioner’s mother’s medical issues and how they impacted on the petitioner’s ability to travel lacks detail and substance. Neither the petitioner nor Dr. [REDACTED] states when the petitioner’s mother passed away, how long she was in poor health, the type of medical care that the petitioner’s mother required, nor the type of care that the petitioner actually provided to her mother. Without more details to substantiate the petitioner’s claims that she could not travel during the requisite period because she was her mother’s healthcare provider, the AAO cannot find that the petitioner should be exempt from the requirement of an in-person meeting between her and the beneficiary within the two-year period before the filing of the petition. Accordingly, the appeal is dismissed. The petition must be denied.

The denial of the petition is without prejudice. Should the petitioner wish to meet the beneficiary in person and then file a new I-129F Petition, she should consult the instructions to the Form I-129F to understand the specific documents that she should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or she may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to her home.

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. The petition is denied.