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

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D7

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 30 2007

WAC 06 259 52877

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 Pakistan, 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).

On November 7, 2006 Citizenship and Immigration Services (CIS) requested verification of the petitioner's status as a U.S. citizen; evidence of the last meeting of the petitioner with the beneficiary; a divorce certificate for the beneficiary; one passport photograph each for the petitioner and the beneficiary; Forms G-325A for the petitioner and the beneficiary; and a birth certificate with English translation for the beneficiary. The petitioner submitted a response to the request for evidence that included a copy of the petitioner's U.S. birth certificate; a statement from the petitioner; Forms G-325A for the petitioner and the beneficiary; a copy of the beneficiary's birth certificate and passport; a death certificate for the petitioner's previous spouse; and a divorce deed dated January 16, 2007 for the beneficiary. The Director denied the petition after determining that the petitioner had not submitted evidence to establish the beneficiary was legally free to marry at the time the Form I-129F was filed. *Decision of the Director*, dated March 2, 2007.

On appeal, the petitioner states that the beneficiary's divorce was granted on January 16, 2007. *Form I-290B.* She submits a second copy of his divorce deed.

Section 8 C.F.R. § 103.2(a) states:

> (1) General. Every application, petition or other document submitted on a form prescribed by this chapter shall be executed and filed in accordance with the instructions contained on the form, each instruction being hereby incorporated into the particular section of the regulations requiring its submission...

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.

In was held in *Matter of Souza*, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed. The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on August 21, 2006. As the divorce of the beneficiary took place on January 16, 2007, the beneficiary was not legally free to marry the petitioner at the time the Form I-129F petition was filed, as required by section 214(d) of the Act.

Furthermore, the AAO notes that the record includes a statement from the petitioner saying that she has never met the beneficiary. *See Statement from the petitioner; Form I-129F.* The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on August 21, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 21, 2004 and ended on August 21, 2006. The petitioner stated that it would be extremely hard for her to visit the beneficiary's country and for him to visit the United States. *Statement from the petitioner.* The AAO notes that the petitioner is not required to meet her fiancé in Pakistan, nor is the beneficiary required to come to the United States. The petitioner has presented no evidence that she and her fiancé explored the possibility of meeting in another country. 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 her or that such a meeting would have violated the customs of the beneficiary's culture or social practice. Therefore, the petition must be denied for this reason as well.

The denial of the petition is without prejudice. Once the petitioner and beneficiary have met, she 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.