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U.S. Citizenship
and Immigration
Services

DB

[Redacted]

FILE: [Redacted]
WAC 03 138 52410

Office: CALIFORNIA SERVICE CENTER

Date:
JAN 27 2006

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: SELF-REPRESENTED

IDENTIC COPY

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. Wiemann, Director
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 sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Iraq, 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 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. *Decision of the Director*, dated December 29, 2003.

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 the Immigration and Naturalization Service [now Citizenship and Immigration Services] on April 11, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on April 11, 2001 and ended on April 11, 2003.

In response to the director's request for evidence and additional information, the petitioner submitted a letter requesting a waiver of the two-year meeting requirement stating that as an American citizen she is not able to fly into Iraq owing to the war and terrorism.

On appeal, the petitioner submits an additional letter, dated January 11, 2004; a letter signed by a physician's assistant, dated January 30, 2004 and a letter from the beneficiary, dated January 9, 2004.

The petitioner contends that the beneficiary is unable to travel out of Iraq. The petitioner asserts that the government in Iraq is currently unstable and a passport office has not been established. *Letter from Patricia A. Duquesnay*, dated January 11, 2004. The submitted letter from a physician treating the petitioner states that she suffers from vertigo as well as an anxiety disorder. The writing physician indicates that it would "be unreasonable for [the petitioner] to travel out of the area alone for 3-4 months due to her panic attacks and her severe vertigo spells." Further, he states that it would be detrimental for the petitioner to travel "out of the country to that area." *Letter from R. Byron Palmer, MD, signed by Christine Elder, Physician's Assistant*, dated January 30, 2004. The petitioner's inability to travel to Iraq coupled with the beneficiary's inability to depart from Iraq 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.