

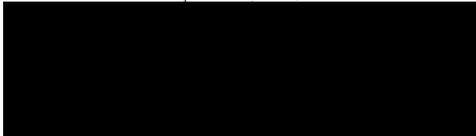
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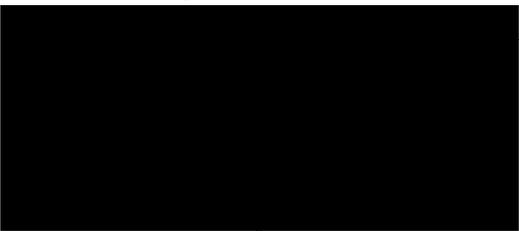


FILE: [REDACTED]
WAC 02 185 52482

Office: CALIFORNIA SERVICE CENTER

Date: MAY 16 2005

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 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 Mexico, 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, and that the petitioner had not established that compliance with the meeting requirement would result in extreme hardship to the petitioner or violate strict and long-established customs of the beneficiary's foreign culture or social practice. *Decision of the Director*, dated September 17, 2002.

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 (CIS)] on May 15, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 15, 2000 and ended on May 15, 2002.

In response to the director's request for evidence and additional information, the petitioner submitted, *inter alia*, a letter written by the petitioner, dated August 11, 2002 and five photographs, undated.

On appeal, the petitioner states that she is presenting new evidence and that she did date and name each of the photographs submitted to the director. *Form I-290B*, dated October 16, 2002. The petitioner submits a letter from a previous employer of the beneficiary, dated October 10, 2002 and an affidavit of the previous landlord of the petitioner and the beneficiary, dated October 16, 2002.

The AAO notes that the submitted affidavit indicates that the petitioner and the beneficiary resided together in Surprise, Arizona from June 16, 2001 until December 7, 2001. *Affidavit of Mrs. [REDACTED]* dated October 16, 2002. Further, the submitted letter from the previous employer of the beneficiary indicates that the beneficiary worked in the area where the petitioner resides and spoke of his relationship with the petitioner during the required two-year period. *Letter from [REDACTED]* dated October 10, 2002. The AAO finds that the evidence on appeal establishes compliance with the meeting requirement under section 214(d) of the Act. Therefore, the appeal will be sustained.

The AAO notes that, according to the record, the beneficiary resided in the United States for an unsubstantiated period of time. Further, according to the petitioner, the beneficiary was removed from the United States. *See Form I-290B* ("The only reason I did not marry [REDACTED] before being deported [sic]..."). The record fails to establish that the beneficiary's residence in the United States occurred pursuant to a lawful inspection and admission by an immigration officer. Further, although the record indicates that the beneficiary was employed in the United States, the record does not contain evidence that the beneficiary entered with or subsequently obtained employment authorization from the Immigration and Naturalization Service [now CIS]. *See Letter from [REDACTED]* The AAO notes that these issues have direct bearing on the beneficiary's admissibility to the United States and will be reviewed by a consular officer before a nonimmigrant visa is issued to the beneficiary pursuant to the approval of the Form I-129F petition.

ORDER: The appeal is sustained and the application is approved.