identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., NW, Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

D6

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 28 2006

LIN 05 204 53696

IN RE: Petitioner: [redacted]
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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Pakistan, as the fiancée 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 acting director denied the petition after determining that the petitioner and beneficiary had not personally met within two-year period preceding the filing of the petition, as required by section 214(d) of the Act. Further, the acting director found that the record failed to establish a basis on which to exempt the petitioner from this meeting requirement. *Decision of the Acting Director*, dated November 3, 2005.

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 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 Citizenship and Immigration Services (CIS) on June 27, 2005. Therefore, the petitioner and the beneficiary were required to have met during the period that began on June 27, 2003 and ended on June 27, 2005.

At the time of filing, the petitioner indicated that he had not previously met the beneficiary, stating that his customs did not allow a meeting prior to their marriage. However, he also provided a signed statement, as did the beneficiary, indicating that they had seen one another in February 2004, but did not meet. In response to the director's request for evidence, the petitioner submitted a second signed statement asserting that he and the beneficiary are prohibited from meeting prior to their wedding, as well as a letter from the co-chair of the Religious Affairs Committee of the Muslim Community Center in Chicago, Illinois. The letter states that "premarital dating or meeting is prohibited by and between fiancé and fiancée in Islam; [t]he arranged marriage is the responsibility of the parents of boys and girls or their guardians."

On appeal, petitioner again asserts that Islamic practice prohibits any meeting with the beneficiary, even one occurring in the presence of other family members and points to the letter from the Muslim Community Center as proof of this prohibition.

The AAO notes the information provided by the Muslim Community Center. However, it does not find that information to establish a basis on which the petitioner may be exempted from the meeting requirement under either of the two grounds set forth at 8 C.F.R. § 214.2(k)(2) – compliance would have resulted in extreme hardship for him or violated the customs of the beneficiary's culture or social practice. Although the letter comes from the co-chair of the Religious Affairs Committee of the Muslim Community Center, there is no indication that the writer is an imam or other individual whose religious training and authority qualifies him to speak to Islamic practice. Accordingly, the record does not establish the authority of the writer's opinions on the requirements imposed on engaged couples by their Islamic faith.

Further, the statement from the Muslim Community Center appears to indicate only that Islamic practice prohibits meetings between engaged couples in the dating context, not that they may never meet, as claimed by the petitioner on appeal. This opinion reflects information previously obtained from the Imam Islamic Foundation of North America. Accordingly to that organization, Islamic law and practice allow for a single meeting of an engaged couple in the following context:

> It is declared that according to Islamic Law and practices, any adult Muslim boy or girl are not allowed to date or meet his/her partner before marriage. However, for finalizing the decision of marriage, it is permissible for both to see each other in the presence of their families.

Accordingly, the AAO does not find the record to establish that Islamic law and practice precluded a face-to-face

meeting between the petitioner and beneficiary in the presence of their parents or guardians during the specified period, a meeting that would have satisfied the requirement of section 214(d) of the Act. The appeal will, therefore, be dismissed.

The AAO notes the petitioner's reference to seeing the beneficiary in February 2004 and that he has submitted documentary evidence of a February-March 2004 trip to Pakistan, which would fall within the specified meeting period required by section 214(d) of the Act. However, the petitioner has unequivocally stated that he saw but did not meet the beneficiary during this visit. Accordingly, the evidence of the beneficiary's February-March 2004 visit to Pakistan does not establish his compliance with the meeting requirement.

The denial of the petition is without prejudice. Should the petitioner and beneficiary meet, he may file a new Form I-129F petition on her behalf so that a new two-year period during which the parties are required to have met will apply.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.