



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 06 266 50141

Office: VERMONT SERVICE CENTER

Date: AUG 16 2007

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

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont 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 Lebanon, 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 record did not establish that the petitioner and beneficiary had personally met within the two-year period immediately preceding the filing of the petition, as required by section 214(d) of the Act. He further determined that the record did not establish a basis on which to exempt the petitioner from this requirement. *Decision of the Director*, dated January 31, 2007.

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.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on September 28, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on September 28, 2004 and ended on September 28, 2006.

At the time of filing, the petitioner indicated that he had not met and seen the beneficiary within the two-year period immediately preceding the filing of the Form I-129F petition. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

To establish eligibility for an exemption under the regulation at 8 C.F.R. § 214.2(k)(2), the petitioner stated that he is in a wheelchair and unable to travel without assistance. The record also includes email communications from the U.S. Embassy in Beirut stating that the beneficiary is an intending immigrant and not qualified under U.S. law to receive a nonimmigrant visa.

On appeal, the petitioner stated that he is a C5-6 Quadriplegic that requires personal assistance in the morning and in the night, and that he is unable to attend work related conferences within the United States that require overnight stays due to his physical condition. Form I-290B and attached statement. The petitioner submits a report from the Commonwealth of Virginia, Department of Rehabilitative Services, Personal Assistance Services confirming that the petitioner is a C-5 Quadriplegic who needs assistance in food preparation, bathing, dressing, bowel/bladder program, and getting in and out of bed. While the petitioner traveled to Israel three years ago to visit family, he noted that he had an assistant who was willing to go with him and that his brothers and cousins helped to lift him into vans to avoid transferring to car seats. *Statement from the petitioner*, dated February 8, 2007. The petitioner explained that if he were to ever find another assistant to travel with him to a foreign country, it would be an extreme hardship to rely on the assistance of the cab drivers for transfers, that he would be risking injury due to their inexperience, and that he would also encounter additional hardships of accessibility and accommodations in a foreign country. *Id.* The petitioner also noted that he could not attend his father's funeral in Israel in November 2005 because he could not find anyone to go with him, and that he again wanted to visit Israel in June 2006, but could not go because no one would assist him. *Statement from the petitioner*, dated December 1, 2006.

The Director found that the petitioner had not established that compliance with the meeting requirement during the specified period would have constituted an extreme hardship pursuant to 8 C.F.R. § 214.2(k)(2). *Decision of the Director*, dated January 31, 2007. While the AAO notes that it is not impossible for the petitioner to travel overseas, as evidenced from his previous trip to Israel, it notes that the legal standard used to exempt the petitioner from the 214(d) meeting requirement is extreme hardship and not impossibility. The AAO finds that the Director erred in his analysis.

The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, with special emphasis placed upon the fact that the petitioner is a C-5 Quadriplegic with limited ability to care for himself and that the U.S. embassy in Beirut has stated that the beneficiary does not qualify for a nonimmigrant visa to visit the United States, the AAO finds that compliance with the meeting requirement would constitute an extreme hardship pursuant to 8 C.F.R. § 214.2(k)(2).

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 met that burden.

ORDER: The appeal is sustained.