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U.S. Citizenship
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Services

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MAY 16 2007



FILE:

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Office: CALIFORNIA SERVICE CENTER

Date:

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 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of India, 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 October 17, 2006.

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 March 16, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 16, 2004 and ended on March 16, 2006.

At the time of filing, the petitioner indicated that although she knew the beneficiary as a student in India prior to her coming to the United States in 1996, a meeting with him was customarily prohibited prior to their wedding day. 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 has submitted an affidavit signed by herself and the beneficiary swearing that they are mutually agreed to an arranged marriage procedure in accordance with long established customary, cultural and traditional practices of their society; a statement from the Dzongkar Choede College Mahayana Buddhist Cultural Association explaining the practice of arranged marriage in Tibetan society, noting that the tradition strictly discourages the prospective bridegroom and the bride from meeting prior to their actual meeting ceremony and the real wedding day; a statement from the Village Leader of 'N' village, T.R.L. Settlement, Gurupura, Mysore District, Karnataka State stating that the parents of the petitioner and the beneficiary have reached a mutual agreement to enter into an arranged marriage for their children and that the prospective bride and bridegroom are customarily restricted from meeting each other prior to the actual wedding day; a statement from the Zongkar Choede Monastery reiterating this same information; a statement from the president from the Zongkar Region Welfare Association noting that the parents of the petitioner and the beneficiary informed their children of their coming marriage after having reached an agreement themselves; a statement from the chairman of the Local Assembly of the Tibetan Rabgyeling Settlement requesting that the personal meeting requirement in the case of the petitioner and the beneficiary be exempted because such a meeting would violate their established tradition and customs of their society; a statement from [REDACTED] Representative of the Central Tibetan Administration of H.H. The Dalai Lama noting that this office has no objection against their mutually agreed marriage; a declaration from the beneficiary's father stating that a meeting between the boy and the girl is customarily prohibited prior to their actual wedding and that the marriage would take place at the petitioner's residence; and a statement by the petitioner stating that personal contacts are unethical and uncustomary prior to the legal marriage ceremony.

On appeal, the petitioner stated that that the previous documents submitted are authentic and issued by competent authorities. *Form I-290B*. She also submitted additional statements from herself, the Tibetan Rabgyeling Settlement, the Village Leader of 'N' village, T.R.L. Settlement, Gurupura, Mysore District, Karnataka State, and the Dzongkar Choede College Mahayana Buddhist Cultural Association.

The Director found that the petitioner had not submitted credible documentation to establish that she was eligible for an exemption under 8 C.F.R. 214.2(k)(2). *Decision of the Director*, dated October 17, 2006. The AAO

observes that the Director did not provide an explanation as to why he found that the petitioner had not established the exemption.

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 numerous letters of support from authorities within the beneficiary's community and from the petitioner's father, the AAO finds that compliance with the meeting requirement would violate the strict and long-established customs of the beneficiary's foreign culture or social practice.

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.