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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

86

FILE:

[REDACTED]
EAC 08 013 52591

Office: VERMONT SERVICE CENTER

Date: **JUL 25 2008**

IN RE:

Petitioner:
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 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 Director, Vermont Service Center and the matter is now before the Administrative Appeals Office (AAO) on appeal. 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 the Ukraine, 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 director denied the petition after determining that the petitioner had failed to submit any of the initial evidence or supporting documentation required by regulation. *Decision of the Director*, dated January 17, 2008.

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.

On appeal, the petitioner submits documentation to support the Form I-129F, Petition for Alien Fiancé(e), he filed on October 15, 2007, including copies of telephone records and letters showing his continuing communication with the beneficiary and receipts for gifts he has purchased and sent her.

The AAO notes that the petitioner's submission of the above documentation does not satisfy the documentary requirements listed in the filing instructions that accompany the Form I-129F. *See sections 3, 4, 5 and 6, Instructions, 129F, Petition for Alien Fiancé(e)*. In the present case, the petitioner has failed to provide proof that he holds U.S. citizenship to establish his eligibility to file the Form I-129F; proof that his and the beneficiary's prior marriages have been legally terminated, leaving them free to marry; Form G-325s, Biographic Information, for himself and the beneficiary; and passport-style photographs of himself and the beneficiary. The AAO also notes that the petitioner indicated on the Form I-129F that he and the beneficiary had not met during the two-year period immediately preceding his filing of the Form I-129F, as required by section 214(d) of the Act. The petitioner has not, however, submitted any evidence to establish that such a meeting would have constituted an extreme hardship for him or would have violated the customs of the beneficiary's culture or social practice.

The AAO notes that the regulation at 8 C.F.R. § 103.2(a) states in pertinent part:

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) further states:

If all require initial evidence is not submitted with the applicaiotn or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence of for ineligibility

In that the record lacks the documentation required when submitting a Form I-129F, the appeal will be dismissed as improperly filed. The denial of the petition is without prejudice, however. The petitioner may file a new Form I-129F petition on the beneficiary's behalf in compliance with statutory and regulatory requirements.

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 not met that burden.

ORDER: The appeal is dismissed.