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U.S. Citizenship
and Immigration
Services

D/6



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **FEB 05 2009**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to § 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting 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 dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of India, as the fiancé(e) of a United States citizen pursuant to § 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 because the petitioner had failed to: (1) establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition; and (2) submit sufficient evidence that meeting the beneficiary in person would have been a hardship for him. On appeal, the petitioner provides a letter and the following supporting documentation: an Internet print-out pertaining to the merger agreement between Invitrogen and Applied Biosystems; and copies of a Notice of Motion, a Child Custody and Visitation Application Attachment, an Application for Order and Supporting Declaration, and a Request for Child Abduction Prevention Order, pertaining to the petitioner's two children.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who is the fiancée or fiancé of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry. . . .

Section 214(d) of the Act, 8 U.S.C. 1184(d), states in pertinent part that a fiancé(e) petition:

[s]hall 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 U.S. Citizenship and Immigration Services (USCIS) on February 11, 2008. Therefore, the petitioner and beneficiary were required to have met between February 11, 2006 and February 11, 2008.

When he filed the petition, the petitioner responded "no" to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two years before the filing of the petition. The petitioner stated that he had met the beneficiary in India in 2004 while vacationing with friends. The petitioner did not request a waiver of the in-person meeting requirement.

The director denied the petition because the petitioner and beneficiary had not met in person during the required time period, and the petitioner failed to establish that he qualified for an exemption from this in-person meeting requirement. On appeal, the petitioner states that he should be exempted from the in-person meeting requirement because of hardship. The petitioner states that he has full custody of his 14-year-old son and visitation rights to his 12-year-old daughter, and that, as a single parent and sole provider, it would be a hardship to leave his son for an extended period of time. He also states that in his job as a customer support engineer, he is on a 24-hour, on-call support schedule for its customer base, and that he could risk losing his job by leaving for any period of time, due to the uncertainty associated with his company's recent acquisition by another company. He states further that he would not be allowed to see the beneficiary even if he travelled to India because dating a man prior to marriage violates a long-established Sikh custom. As stated above, the petitioner submits the following supporting documentation: an Internet print-out pertaining to the merger agreement between Invitrogen and Applied Biosystems; and copies of a Notice of Motion, a Child Custody and Visitation Application Attachment, an Application for Order and Supporting Declaration, and a Request for Child Abduction Prevention Order, pertaining to the petitioner's two children.

The petitioner has failed to establish that travel to India during the requisite period should be exempted because of hardship. The petitioner's assertions and supporting documentation regarding the petitioner's custody of his son, his on-call status in his job, the merger of his company with another company, and the beneficiary's Sikh customs and how they impacted on the petitioner's ability to travel, lack detail and substance. The petitioner has offered no evidence to establish that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for him or that such a meeting would have violated the customs of the beneficiary's culture or social practice. The petitioner's reasons are not sufficient to waive the requirement of an in-person meeting with the beneficiary within the two years before the filing of the petition. Without more details to substantiate the petitioner's claims that he could not travel during the requisite period, the AAO cannot find that the petitioner should be exempt from the requirement of an in-person meeting between him and the beneficiary within the two-year period before the filing of the petition. Accordingly, the appeal is dismissed. The petition must be denied.

The denial of the petition is without prejudice. Should the petitioner wish to meet the beneficiary in person and then file a new I-129F Petition, he should consult the instructions to the Form I-129F to understand the specific documents that he should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his home.

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. The petition is denied.