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U.S. Citizenship
and Immigration
Services



De

FILE:

[Redacted]
EAC 07 227 53202

Office: VERMONT SERVICE CENTER

Date: **JAN - 2 2009**

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 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, Vermont 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 Colombia, 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 establish that he and the beneficiary had met within the two-year period immediately preceding the filing of the petition, as required under section 214(d) of the Act or that such a meeting would have constituted an extreme hardship or violated the customs of the beneficiary's culture or social practice. *Decision of the Director*, dated February 11, 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.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on July 30, 2007. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 30, 2005 and ended on July 30, 2007.

At the time of filing, the petitioner indicated that he and the beneficiary had met in 2005. *Form I-129*, dated July 26, 2007. Copies of pages from the petitioner's passport show that he last entered Colombia on July 1, 2005 and departed on July 13, 2005, 17 days before the two-year period began.

On December 24, 2007, the Director requested additional documentation showing that the petitioner and beneficiary had met within the two-year period immediately preceding the filing of the petition or that such a meeting would have constituted an extreme hardship or violated the customs of the beneficiary's culture or social practice. In response to the director's request for documentation, the petitioner submitted the following documentation: copies of the face page from his U.S. passport and the page showing his entry and exit stamps from Colombia; two affidavits from family friends attesting to the petitioner's and beneficiary's relationship; copies of the petitioner's airline ticket receipt from his trip to Colombia; medical documents showing that the petitioner had orthopedic surgery on his right knee in October 2006 and was not able to return to work until January 22, 2007; a copy of the decision from the New Jersey Division of Unemployment Insurance, Appeal Tribunal, indicating that the applicant applied for unemployment benefits as of January 7, 2007; a letter from the petitioner's former employer, dated January 4, 2007, stating that the petitioner has been terminated; a letter from the petitioner's former employer, dated November 21, 2006, explaining the petitioner's benefits under the Family Medical Leave Act; statements showing that the petitioner has been sending money to the beneficiary in Colombia and that they communicate by telephone on a regular basis; and a statement from the petitioner, dated January 5, 2008, which details how he and the beneficiary met and how, despite his unemployment, he continues to send her money.

On appeal, the petitioner states that he is currently in Colombia and that he and the beneficiary will be married on March 17, 2008. *Form I-290B*, dated March 11, 2008. The petitioner submits a letter from the First Notary Public of Soledad, Colombia, dated March 11, 2008, which states that on March 10,

2008 the beneficiary and petitioner requested a civil marriage and that the ceremony will take place on March 17, 2008 in the notary's office. The petitioner also submitted a printout of his flight itinerary, which shows that he planned to arrive in Colombia on March 10, 2008 and depart on March 12, 2008.

The AAO recognizes that from October 2006 through January 2007 the petitioner was out of work due to surgery and, thereafter, was unemployed. However, financial constraints are a common concern for those filing the Form I-129F petition and do not constitute extreme hardship to the petitioner. The petitioner has also not established that while his recovery from surgery prevented him from working, it also precluded his travel to meet the beneficiary.

Furthermore, the AAO notes that although section 214(d) of the Act requires the petitioner and the beneficiary to meet, it does not require the petitioner to travel to the beneficiary's home country. The record on appeal does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Colombia, including, but not limited to the beneficiary traveling to meet the petitioner in the United States or a bordering country.

The AAO notes that if the petitioner and beneficiary marry in Colombia, the beneficiary may benefit from a new Form I-129F filed on her behalf.

The Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000) has amended the language of section 101(a)(15)(K) to benefit an alien who:

(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....

Further discussion of how a spouse may come to the United States under section 101(a)(15)(K) of the Act is found at 8 C.F.R. § 214.2(k)(7), which provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(k)(ii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F....

Accordingly, if the petitioner and beneficiary have married and the petitioner wishes to submit a new Form I-129F for the beneficiary, he must first file a Form I-130 immigrant visa petition on her behalf. To prove that he has complied with this requirement, the petitioner should, at the time of filing, submit proof of the Form I-130 filing, i.e., the fee receipt issued by U.S. Citizenship and Immigration Services (USCIS).

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.