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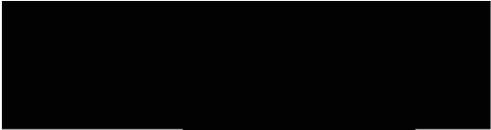
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

WAC 07 213 50042

Office: CALIFORNIA SERVICE CENTER

Date: JAN 05 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, California 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 Vietnam, 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 failed to establish that he and the beneficiary 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 January 18, 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 5, 2007. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 5, 2005 and ended on July 5, 2007.

At the time of filing, the petitioner indicated that he and the beneficiary had met in Vietnam. *Petitioner's Letter*, dated July 1, 2007. The petitioner does not specify the exact dates that he met the beneficiary, but does state that they, "came to an engagement ceremony on May 19, 2005." *Id.*

On November 14, 2005, the Director requested additional documentation to establish the last meeting between the petitioner and beneficiary or that meeting the beneficiary during the two-year time period prior to filing would have resulted in extreme hardship. In response to the director's request for documentation, the petitioner submitted photographs of himself with the beneficiary, boarding passes for his flights to Vietnam and baggage claim tickets for his flight from Taipei to Los Angeles. The boarding passes show that the petitioner flew from Kansas City to Chicago on March 27, 2005. Then the petitioner flew from Chicago to San Francisco to Taipei to Ho Chi Minh City, arriving in Ho Chi Minh City on March 29, 2005. The petitioner also submitted baggage claim tickets showing that he was on a flight from Taipei to Los Angeles on May 24, 2005.

On appeal, the petitioner states that he was planning on returning to Vietnam to marry the beneficiary, but did not have enough vacation time and did not want to quit his job. *Attachment to Form I-290B*. The petitioner states that time passed very quickly and his hesitation resulted in his being late in submitting the petition for his fiancée. He asks for sympathy to reconsider and approve his case. *Id.*

The AAO recognizes the difficulties in planning international travel, however the fact remains that the petitioner and beneficiary have not met within the two-year time period specified above. Therefore, their petition does not satisfy the requirements of section 214(d) of the Act. Further, 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. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Once the petitioner and beneficiary meet again, the petitioner may file a new I-129F petition on the beneficiary's behalf so that a new two-year meeting period will apply.

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.