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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **JAN 09 2009**

IN RE:

Petitioner:
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, Vermont 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 failed to establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition.

On appeal, the petitioner submits a statement, photographs of his and the beneficiary's engagement ceremonies, an affidavit from the petitioner's brother-in-law, and a copy of an affidavit from the beneficiary's father which had been previously submitted.

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 on February 12, 2008. Therefore, the petitioner and beneficiary were required to have met in person sometime between February 12, 2006 and February 12, 2008.

In a March 11, 2008 Request for Evidence (RFE), the director requested, among other items, evidence to establish that the petitioner and beneficiary met in person within the required timeframe or, in the alternative, evidence to establish why the requirement of an in-person meeting should be waived. In response, the petitioner submitted an affidavit from the beneficiary's father. According to this affidavit, an engagement between the petitioner and beneficiary had taken place on February 2, 2008 "in presence of the following two witnesses along with the elders of the family in accordance with Muslim customs and traditions."

In denying the petition, the director noted the affidavit and stated that no evidence was submitted in support of the affidavit such as photographs of the engagement ceremony. Citing that the requirement of an in-person meeting between the petitioner and beneficiary had not been met, the director denied the petition.

On appeal, the petitioner states his intended marriage is an arranged one between the heads of his and the beneficiary's families. The petitioner states that he and the beneficiary met on the internet and desired to get married. According to the petitioner, an engagement ceremony was held for him in New York on February 1, 2008 and a second engagement ceremony was held for the beneficiary on February 3, 2008 in India. The petitioner submits photographs from these two ceremonies. In addition to submitting a copy of the affidavit that the beneficiary's father previously submitted, the petitioner submitted an affidavit from his brother-in-law, who is the head of the family. The brother-in-law confirms that an engagement ceremony was held for the petitioner in accordance with Muslim tradition on February 1, 2008.

All of the evidence submitted in support of the petition establishes that the petitioner and beneficiary are seeking to marry according to Muslim tradition. Neither the beneficiary nor any of the affiants states, and none of the evidence establishes, however, that compliance with the meeting requirement would violate strict and long-established customs of the beneficiary's foreign culture or social practice. The AAO notes that U.S. Citizenship and Immigration Services has experience with similar applications and relies on information provided by Imam Islamic Foundation of North America, which states:

It is declared that according to Islamic Law and practices, any adult Muslim boy or girl are not allowed to date or meet his/her partner before marriage. However, for finalizing the decision of marriage, it is permissible for both to see each other in the presence of their families.

Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, he should ensure that he has documentary evidence of having met the beneficiary in person within the two years before the filing of the petition, or sufficient evidence to establish that the requirement should be waived. If necessary, the petitioner 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.