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U.S. Citizenship
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Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **JAN 14 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)

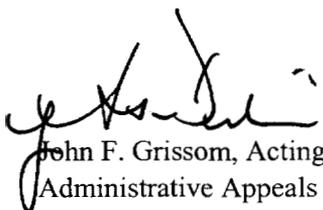
ON BEHALF OF PETITIONER:

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 England, 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 submit a Form G-325A for herself and the beneficiary. On appeal, the petitioner submits the requested documents.

The director's reason for denying the petition has been overcome by the petitioner's submission of a Form G-325A for herself and the beneficiary. Nevertheless, the petition may not be approved because the record does not show that the petitioner and beneficiary met in person within the two-year period immediately before the filing of the petition.

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 April 6, 2007. Therefore, the petitioner and beneficiary were required to have met in person between April 6, 2005 and April 6, 2007. On the Form I-129F, the petitioner indicated that she and the beneficiary had met within the two-year period. She stated on the form, "We met in parking lot of [REDACTED]. He was walking his dog and I just finished hiking the trail." She, however, did not provide any dates or evidence of this meeting. The record is also devoid of any photographs of the couple together. The record does contain a sworn statement made by the beneficiary when he attempted to enter the United States on July 25, 2006 under the Visa Waiver Pilot Program (VWPP). Although the beneficiary indicated that he was coming to the United States to marry the petitioner, nothing in the sworn statement contained information on when the petitioner and beneficiary had last seen each other¹. The petitioner's passport also does not contain any entry or exit stamps from the United Kingdom or United States during the requisite period.

The law clearly states that the petitioner and beneficiary must have met in person within the two years before the filing of the petition. Based upon the evidence in the record, the AAO is unable to determine when this meeting took place. The petitioner has not, therefore, established compliance with Section 214(d) of the Act because she has failed to establish that she and the beneficiary met between the April 6, 2005 and April 6, 2007 timeframe. For these reasons, the petition must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, she should consult the instructions to the Form I-129F to understand the specific documents that she 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 call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to her 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.

¹ The record indicates that the beneficiary was refused admission into the United States under the VWPP program on July 25, 2006 and was removed from the United States on that same day.