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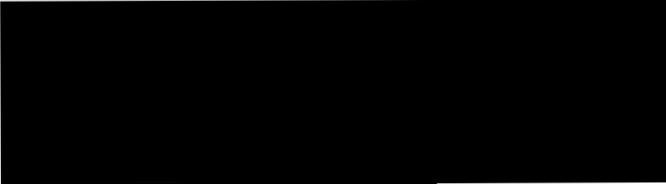
U.S. Citizenship
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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 14 2009**

IN RE:

Petitioner:
Beneficiary:



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 Guinea, 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 she and the beneficiary met in person within the two years immediately preceding the filing of the petition.

On appeal, the petitioner submits attestations of the petitioner's and beneficiary's engagement, a letter of intent written by the petitioner, and a letter of reference from the husband of the petitioner's niece.

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 November 26, 2007. Because section 214(d) of the Act states that the petitioner and beneficiary must have met in person within two years before the filing of the petition, the petitioner should have met the beneficiary in person sometime between November 26, 2005 and November 26, 2007. The petitioner responded "no" to the question on the I-129F Petition about whether she and the beneficiary had met in person within the two years before the filing of the petition. In response to the director's April 1, 2008 Request for Evidence (RFE), the petitioner stated that she has known the beneficiary since the 1980's when she was in high school and that she and the beneficiary began their courtship in 2006 after the beneficiary's spouse passed away. The petitioner stated that she did not have any photographs of her with the beneficiary because "we have since lived a world apart." In addition to her statement, the petitioner submitted a copy of her divorce decree, a copy of the beneficiary's spouse's death certificate, and a letter from Contra Costa Health Services indicating that the petitioner has received ongoing treatment for breast cancer.

The director denied the petition because the petitioner and beneficiary had not met in person during the required time period. On appeal, the petitioner submits attestations of the petitioner's and beneficiary's engagement, a letter of intent written by the petitioner, and a letter of reference from the husband of the petitioner's niece.

The petition is not approvable. The law clearly states that the petitioner and beneficiary must have met in person within the two years before the filing of the petition. Here, the petitioner and the beneficiary have not seen each other in more than twenty years. Although the petitioner submits evidence that establishes her and the beneficiary's intent to marry, she has not established that the requirement of an in-person meeting with the beneficiary should be waived. The petitioner submitted a letter from her physician indicating that she was treated for breast cancer in 2003 and continues to receive follow-up treatment; however, the physician never states that the beneficiary is unable to travel due to her medical condition. For these reasons, the petition must be denied.

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