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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**



FILE:

Office: VERMONT SERVICE CENTER

Date: **MAR 16 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)

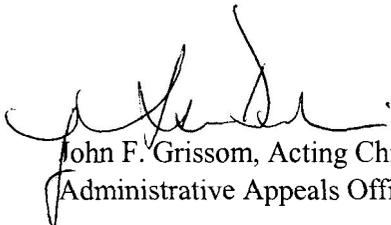
ON BEHALF OF PETITIONER:

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, 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 Brazil, 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 and copies of evidence 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 (USCIS) on May 27, 2008. Because section 214(d) of the Act states that the petitioner and the 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 May 27, 2006 and May 27, 2008. The petitioner responded “yes” to the question on the I-129F Petition about whether he and the beneficiary had met in person within the two years before the filing of the petition, and explained in an attachment that he had originally met the beneficiary in 1994, and that he would be traveling to Brazil on June 5, 2008 to meet with her again. In response to the director’s October 15, 2008 Request for Evidence (RFE), the petitioner stated that he had undergone financial stress due to the deteriorating health of his father, and that he himself suffers from diabetes. He also stated that he and the beneficiary mutually decided not to see one another in person prior to their engagement, which took place via videoconference. In addition to his statement, the petitioner submitted: copies of the photo pages of his and the beneficiary’s passports; evidence of a trip he had taken to Brazil to see the beneficiary after the filing of the petition; evidence of the wedding bands; medical reports for the petitioner’s father; an employment-related memorandum from the petitioner, dated August 18, 2008, requesting a temporary detail to Tampa, Florida, due to his father’s deteriorating health; and correspondence between the petitioner and the beneficiary.

The director denied the petition because the petitioner and the beneficiary had not met in person during the required time period. On appeal, the petitioner states that he and the beneficiary had not met in person during the required time period because of personal mutual reasons and because of his father’s medical expenses. The petitioner also states that he wanted to grant his father’s wish to witness the wedding.

The petition is not approvable. The law clearly states that the petitioner and the beneficiary must have met in person within the two years before the filing of the petition. Here, the petitioner originally met the beneficiary in 1994, and then met with her again in June 2008, after the filing of the petition. Although the petitioner submits evidence that establishes his and the beneficiary’s intent to marry, he has not established that the requirement of an in-person meeting with the beneficiary within two years before the filing of the petition should be waived. The evidence regarding the medical and financial issues of the petitioner and his father, and how they impacted on the petitioner’s ability to travel within the required time period lacks detail and substance. The AAO also acknowledges the petitioner’s statement that because of mutual personal reasons, he and the beneficiary did not want to get engaged in person. The petitioner’s explanation and evidence, however, are not sufficient to waive the requirement of an in-person meeting with the beneficiary within the two years before the filing of the petition. 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, 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. 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.