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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAY 27 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)

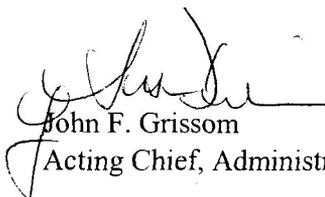
ON BEHALF OF PETITIONER:

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, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The director's denial of the approved petition will be withdrawn.

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 had failed to establish that she has a bona fide fiancée relationship with the beneficiary.

On appeal, the petitioner explains the circumstances surrounding the beneficiary's visa interview at the U.S. embassy in New Delhi in relation to the I-129F petition that she filed on his behalf on February 20, 2007.<sup>1</sup> The same petition was ultimately returned to the director, as it had expired. The petitioner explains that on September 21, 2007, she filed a second I-129F petition on behalf of the beneficiary.

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.

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<sup>1</sup> Petition No. EAC-07-095-51962.

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 instant Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services (USCIS) on September 21, 2007. Therefore, the petitioner and the beneficiary were required to have met between November 21, 2005 and November 21, 2007.

On December 30, 2008, the director denied the petition, finding that the U.S. consular officer concluded during the beneficiary's July 2, 2007 visa interview for the previous I-129 petition<sup>2</sup> that the petitioner did not have a bonafide relationship with the beneficiary. The director concluded that the petitioner still had not demonstrated that she had a bonafide fiancée relationship with the beneficiary.

On appeal, the petitioner provides an account of the visa interview conducted with the beneficiary at the U.S. embassy in New Delhi, and states that the consulate did not allow sufficient time to view the requested additional documentation before deciding on August 3, 2007 not to issue the visa. The petitioner also states that after filing the instant petition, she contacted the adjudicating office regarding its status and her not receiving the Request for Evidence (RFE), which was reportedly mailed to her on July 14, 2008. The petitioner provides the following supporting documentation: correspondence from the U.S. embassy in New Delhi, India and from USCIS; letters verifying the petitioner's student status; a money gram receipt; correspondence between the petitioner and the beneficiary; and an affidavit signed by the petitioner and the beneficiary.

Section 214(d) of the Act states that CIS *shall* approve the Form I-129F when a petitioner submits evidence to establish that he/she and the beneficiary have met within the two-year period immediately the filing of the Form I-129F, have a bonafide intention to marry and are legally able and willing to marry within 90 days of the beneficiary's arrival in the United States. In denying the instant petition, the director appears to have imposed an additional requirement on the petitioner – establishing the genuineness of her relationship to the beneficiary. However, no such requirement exists for the approval of a Form I-129F, and the AAO finds the director to have erred in imposing it. While section 214(d) of the Act stipulates that the petitioner must establish that she and the beneficiary have a bonafide intention to marry, this language is not synonymous with a requirement that the petitioner establish the closeness of their relationship. The AAO has found nothing in the record to indicate the petitioner and beneficiary do not intend to marry within 90 days of the beneficiary's arrival in the United States.

In reaching its decision, the AAO notes the concerns expressed by the consular officer and, subsequently, the director regarding presenting sufficient evidence of a credible relationship between the petitioner and the beneficiary. However, as noted above, section 214(d) of the Act requires only that the petitioner establish that the petitioner and the beneficiary have previously met in person within two

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<sup>2</sup> See Footnote No. 1

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. As discussed above, the filing date of the instant petition is September 21, 2007, and thus the petitioner and the beneficiary were required to have met between November 21, 2005 and November 21, 2007. The evidence of record reflects that this meeting requirement has been met. The record reflects no previous marriages for either the petitioner or the beneficiary, and contains an affidavit signed by the petitioner and the beneficiary affirming and declaring their intent to marry within 90 days of the beneficiary's arrival to the United States. Accordingly, the reservations expressed by the consular officer and the director are not probative for the purposes of these proceedings.

The director's denial of the instant petition is based on the petitioner's failure to establish a bonafide fiancée relationship with the beneficiary. As the director erred in imposing such a requirement on the petitioner, the AAO finds the petitioner to have overcome the basis for the director's denial of the instant petition. Accordingly, the AAO will sustain the petitioner's appeal and withdraw the director's denial of the petition.

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 sustained that burden.

**ORDER:** The appeal is sustained. The denial is withdrawn. The petition is approved.