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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  
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Services

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DG



FILE: Office: VERMONT SERVICE CENTER Date: **OCT 29 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)

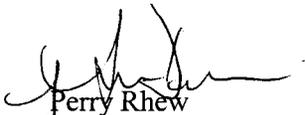
ON BEHALF OF PETITIONER:

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).

  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely filed. Upon further review, the AAO has determined that the appeal was filed timely and thus will reopen the proceeding on a Service motion. The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, 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 nonimmigrant visa petition because the petitioner and the beneficiary had not met in person within the two years immediately preceding the filing of the petition. On appeal, the petitioner provides a personal statement dated May 6, 2008; a letter dated April 27, 2008, from a manager at the U.S. Postal Service located in Gaithersburg, Maryland; and information related to the 2003 engagement of the petitioner and 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.

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.

As noted by the AAO in its December 17, 2008 decision, on March 25, 2005, U.S. Citizenship and Immigration Services (USCIS) sent to the petitioner a notice of its intent to revoke (NOIR) the approval of a previously approved Petition for Alien Fiancé(e) (Form I-129F) that the petitioner filed on this beneficiary's behalf. The NOIR was written because there was evidence that neither the petitioner nor the beneficiary intended to conclude a valid marriage within 90 days of the beneficiary's arrival in the United States. On July 18, 2005, USCIS revoked the approval because the petitioner failed to respond to the notice.

The petitioner subsequently filed the instant I-129F petition with USCIS on November 13, 2007. Therefore, the petitioner and the beneficiary were required to have met between November 13, 2005 and November 13, 2007.

As noted by the director in his April 4, 2008 decision to deny the petition, the petitioner indicated on the petition that he had not met and seen the beneficiary within the two-year period immediately preceding the filing of the petition. The director noted that, in response to the request for additional evidence on February 21, 2008, the petitioner submitted additional evidence, including a personal letter stating that he was unemployed from November 2005 to August 2006, and thus was financially unable to travel to Vietnam to visit the beneficiary, and that, as he was a new employee of the U.S. Postal Service as of August 2006, he was unable to take a vacation to visit the beneficiary. The director determined that the petitioner's work obligations did not rise to the level of extreme hardship.

On appeal, the petitioner submits evidence of his engagement ceremony with the beneficiary in 2003, and states that the petition should be approved because his relationship with the beneficiary is bona fide.

The petitioner submits a letter, dated April 27, 2008, from [REDACTED] a manager at the U.S. Postal Service located in Gaithersburg, Maryland, who states, in part, that the petitioner has been employed by the U.S. Postal Service from February 25, 2007 to the present, and that in May 2007, the petitioner inquired about a leave of absence, but "due to the nature of his employment status chose to postpone his request." The AAO acknowledges the petitioner's statement on appeal that, in his April 27, 2008 letter, [REDACTED] did not include the petitioner's probationary employment period when he listed the petitioner's employment start date. The AAO also acknowledges the petitioner's statement regarding his financial hardship due to a period of unemployment prior to his getting hired by the U.S. Postal Service. The petitioner, however, has not demonstrated that his period of unemployment and his subsequent employment obligations with the U.S. Postal Service rise to the level of extreme hardship. Moreover, section 214(d) of the Act does not require that the petitioner travel to the beneficiary's home country for the requisite meeting. In addition, section 214(d) of the Act does not require that the meeting be of any specified duration, only that it occur within two years of the filing date of the petition. Without more details to substantiate the petitioner's claims that he could not travel during the requisite period because of hardship issues, the AAO cannot find that the petitioner should be exempt from the requirement of an in-person meeting between him and the beneficiary. Accordingly, the appeal is dismissed. The petition must be denied.

The denial of the petition is without prejudice to the filing of a new I-129F Petition on the beneficiary's behalf. 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](http://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.