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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

APR 30 2010

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:

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 Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 China, 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 record contains no evidence that the petitioner and the beneficiary personally met within the two-year period immediately preceding the filing of the petition or that the petitioner qualified for a waiver of that requirement. On appeal, counsel states that compliance with the meeting requirement would violate strict and long-established customs of the beneficiary's foreign culture and social practice. As supporting documentation, counsel submits a new letter from the petitioner's father, dated February 15, 2010, and a new letter from the secretary of the Central Executive Committee of Dhomay of Tibet, dated February 12, 2010.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

Subject to subsections (d) and (p) of section 214, an alien who -

(i) 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 admission.

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), 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 2 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 July 29, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between July 29, 2007 and July 29, 2009.

When he filed the petition, the petitioner responded "No" to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. In his June 17, 2009 letter, the petitioner stated, in part, that he met the beneficiary and her family in December 2006, during a vacation to Tibet and that, since his return to the United States in April 2007, they have stayed in contact by phone. The petitioner submitted various supporting documents, including a letter dated July 18, 2009, from the president of the Wisconsin Tibetan Association located in Madison, Wisconsin, who states, in part, that arranged marriages are still very popular in Tibet.

On November 20, 2009, the director issued a Notice of Intent to Deny (NOID), requesting that the petitioner submit evidence that he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition or, in the alternative, evidence to establish why the requirement of an in-person meeting should be waived.

In his December 16, 2009 response to the director's NOID, counsel submitted a letter dated December 7, 2009, from the secretary of the Central Executive Committee of Dhomay of Tibet, [REDACTED], who states, in part, as follows:

After the engagement the bride and groom are expected not to meet with one another from the date of the engagement to the wedding. Doing so would be a significant departure from the traditional social practice and custom of Amdo/Qinghai and would bring bad luck and misfortune to the young couple in the future.

Counsel also submitted a letter dated December 11, 2009, from the petitioner's father, [REDACTED], who states, in part, as follows:

If my son is to meet with [the beneficiary] before the wedding I will be very disappointed and ashamed. I have heard of other couples doing this and their marriages failed.

The director denied the petition because the petitioner failed to establish that he and the beneficiary had met, as required under section 214(d) of the Act, or that he qualified for an exemption from this meeting requirement, pursuant to 8 C.F.R. § 214.2(k)(2).

On appeal, counsel submits a new letter dated February 12, 2010, from the secretary of the Central Executive Committee of Dhomay of Tibet, [REDACTED] who states, in part:

In my previous letter . . . my intention was to convey that [the petitioner and the beneficiary] can not and must not meet with one another from the date of the engagement to the wedding. As I stated before doing so would violate strict and long established customs.

Counsel also submits a new letter dated February 15, 2010, from the petitioner's father, [REDACTED], who states, in part:

The couples whom I was referring to that have met before their marriages are not from Tibetan culture, but they are from here in America. I believe this is why most of the couples are divorced here.

The AAO acknowledges the assertions from the petitioner's father and from the secretary of the Central Executive Committee of Dhomay of Tibet, [REDACTED], that an in-person meeting between the petitioner and the beneficiary would violate strict and long-established customs. The AAO notes, however, that the president of the Wisconsin Tibetan Association in his July 18, 2009 letter does not state that the petitioner is prohibited from meeting the beneficiary. Upon review of the evidence, the record does not contain sufficient supporting documentation from recognized authorities of the beneficiary's foreign culture and social practice to establish that the petitioner is prohibited from meeting the beneficiary. In the absence of substantiating documentation, the assertions of the secretary of the Central Executive Committee of Dhomay of Tibet and the petitioner's father, standing alone, do not form the basis for a finding that compliance with the meeting requirement would violate strict and long-established customs of the beneficiary's foreign culture or social practice. The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

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, or sufficient evidence to establish that the requirement should be waived. 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.