



U.S. Citizenship
and Immigration
Services

D6

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **FEB 16 2010**

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)

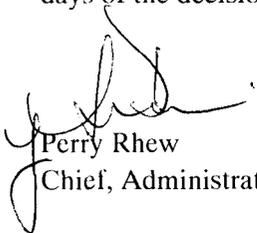
ON BEHALF OF PETITIONER:

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 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.

It is noted that a previous K-1 nonimmigrant petition (WAC-06-131-51593) was filed by the petitioner on behalf of the beneficiary on March 30, 2006, and approved by the director on November 20, 2006. The petition was subsequently returned to U.S. Citizenship and Immigration Services (USCIS) by the U.S. Consulate General in Ho Chi Minh City, Vietnam, for further review. On April 3, 2008, the director terminated action on the petition, pursuant to 8 C.F.R. § 214.2(k)(5).

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 record contains no evidence that the petitioner and the beneficiary personally met within the two-year period immediately preceding the filing of the petition. On appeal, the petitioner states that the director's decision is unfair, as he went to Vietnam in March of 2007, to assist the beneficiary with her visa application and that, upon his return to the United States, he forgot to ask the "U.S. Custom Officer" for an admission stamp in his U.S. passport.

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 USCIS on August 21, 2008. Therefore, the petitioner and the beneficiary were required to have met in person between August 21, 2006 and August 21, 2008.

When he filed the petition, the petitioner responded "Yes" 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. The petitioner stated that he met the beneficiary in 2004, and filed the paperwork after he went back to Vietnam in 2005.

On March 11, 2009, the director issued an RFE, 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.

In his April 10, 2009 response to the director's RFE, the petitioner stated that his and the beneficiary's wedding ceremony was held on March 24, 2007, and that he returned to the United States on April 4, 2007. The petitioner also stated that he last saw the beneficiary in November and December 2008. The petitioner's supporting documentation included: two boarding pass stubs dated November 27, 2008 and November 28, 2008, respectively; two boarding pass stubs, dated April 4 (year omitted); a photograph of the petitioner and the beneficiary, dated "24/3/2007" and inscribed "[redacted]"; and another photograph of the petitioner and the beneficiary next to their wedding cake, which, according to the petitioner, was decorated with the "Eastern calendar" date of February 6, 2007.

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.

On appeal, the petitioner states that he went to Vietnam in March of 2007 to assist the beneficiary with her visa application, and that, upon his return to the United States, he forgot to ask the "U.S. Custom Officer" for an admission stamp in his U.S. passport.

The law clearly states that the petitioner and the beneficiary must have met in person within the two-year period immediately preceding the filing of the petition. In this case, the petitioner and the beneficiary were required to have met in person between August 21, 2006 and August 21, 2008. Thus, the petitioner's evidence pertaining to his November/December 2008 trip to Vietnam is outside the required time period and not relevant to this matter. The petitioner's remaining supporting

documentation included: two boarding pass stubs, dated April 4 (year omitted); a photograph of the petitioner and the beneficiary, dated "24/3/2007" and inscribed "[REDACTED]"; and another photograph of the petitioner and the beneficiary next to their wedding cake, which, according to the petitioner, is decorated with the "Eastern calendar" date of February 6, 2007. The petitioner, however, has not submitted any evidence, such as copies of his passport pages containing entry and/or exit stamps showing that the petitioner actually made the trip in March and April of 2007. A passenger receipt that is unaccompanied by actual proof of travel, i.e., copies of ticket stubs, boarding passes and/or pages from the petitioner's passport showing the dates of admission to and departure from Vietnam, is insufficient to establish that the petitioner traveled to meet the beneficiary during the specified time period. Further, the photographs submitted by the petitioner of his and the beneficiary's alleged 2007 wedding/engagement are not film-dated, and, therefore, also fail to place the petitioner and the beneficiary together in the required time period. Based upon the evidence in the record, the AAO is unable to determine when the requisite meeting took place. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner, therefore, has not established compliance with Section 214(d) of the Act because he has failed to establish that he and the beneficiary met between the August 21, 2006 and August 21, 2008 timeframe. 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 immediately preceding 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.