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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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 20 2010

IN RE: Petitioner: [redacted]
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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 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 nonimmigrant visa petition because the petitioner failed to submit any supporting documentation. On appeal, the petitioner submits a letter and photographs of her engagement to the beneficiary.

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 January 2, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between January 2, 2007 and January 2, 2009.

When she filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether she and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner stated that she had known the beneficiary since 2001, through family friends, and that she had met him in the past few months at her mother's funeral in India.

On appeal, the petitioner states, in part, that she initially met the beneficiary four or five years ago, and that she met him again last year in August at her mother's funeral. The petitioner also states that she and the beneficiary were later engaged in a private ceremony. As supporting documentation, the petitioner submits photographs of the engagement ceremony, which are dated May 4, 2009, after the January 2, 2009 filing date of the petition. Upon review of the evidence, the petition may not be approved because the record still does not contain the following required documentation: proof of the petitioner's U.S. citizenship; evidence of the termination of any prior marriages for the petitioner and the beneficiary; passport-style color photographs for the petitioner and the beneficiary; completed G-325A, Biographic Information forms for the petitioner and the beneficiary; original statements from the petitioner and the beneficiary or other evidence that establishes their mutual intent to marry within 90 days of the beneficiary's entry into the United States in K-1 status; and evidence that the petitioner and the beneficiary personally met within the two-year period immediately preceding the filing of the petition. As discussed above, the engagement photographs are dated after the January 2, 2009 filing date of the petition, and thus they do not show that the petitioner and the beneficiary met within the required time period. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. 8 C.F.R. 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The instructions to the I-129F petition at pages 2 and 3, items #5 and #6, state that the above described documentation must be submitted for both the petitioner and the beneficiary. When filing the petition, the petitioner did not submit any supporting documentation, and thus the director denied the petition.

On appeal, the petitioner submits the items listed above, but does not submit all of the required supporting documentation as described in the instructions to the I-129F petition. As a result, the beneficiary cannot benefit from the instant petition. Therefore, the appeal will be dismissed and the petition will be denied.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, she should ensure that she submits all of the required supporting documentation. If necessary, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that she 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 she may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to her 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.