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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:



Office: VERMONT SERVICE CENTER

Date:

JAN 05 2011

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

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 The director's decision shall be withdrawn and the petition remanded for entry of a new decision

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ethiopia, 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 submits a statement and additional documents including the following: a partial copy of her Ethiopian passport (), renewed to July 18, 2010, with stamps on Page 10, dated March 4, 2007 and January 22, 2008, respectively, from Ethiopian Immigration; copies of the identification pages from her U.S. passport and from the U.S. passport of her and the beneficiary's son, [REDACTED]; a copy of the U.S. immigrant visa for her and the beneficiary's daughter, [REDACTED]; a money transfer receipt dated June 2, 2009, from herself to the beneficiary; a copy of the identification page from the beneficiary's Ethiopian passport; copies of email messages and phone cards; and photographs.

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 January 22, 2009. Therefore, the petitioner and the beneficiary were required to have met in person between January 22, 2007 and January 22, 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.

On September 3, 2009, the director issued an RFE, requesting that the petitioner submit evidence that she and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition or that she qualified for a waiver of that requirement.

In her September 24, 2009 response to the director's RFE, the petitioner submitted additional documentation, including copies of her passport pages, some of which were illegible.

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

On appeal, the petitioner states, in part, that she visited the beneficiary every year until her children arrived in the United States in 2009. As supporting documentation, the petitioner submits the additional items listed above, including a partial copy of her Ethiopian passport (██████████), renewed to July 18, 2010, with stamps on Page 10, dated March 4, 2007 and January 22, 2008, respectively, from Ethiopian Immigration. The petitioner, therefore, has demonstrated that she and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition, and has overcome this ground for denial. The petition may not be approved, however, because the record does not contain 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.¹ Accordingly, the AAO shall remand the matter to the director so that he can provide the petitioner with an opportunity to submit original statements from herself and the beneficiary that establishes their intent to marry within 90 days of the beneficiary's entry into the United States in K-1 status. The director may

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

request any additional information or evidence that he deems necessary. As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn and the matter remanded for issuance of a Request for Evidence (RFE) and entry of a new decision. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.