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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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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date: **JAN 07 2011**

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:

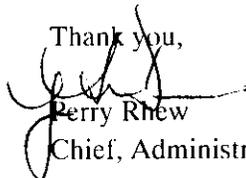
[REDACTED]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 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 Cambodia, 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 submits a statement and additional evidence.

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 5, 2010. Therefore, the petitioner and the beneficiary were required to have met in person between January 5, 2008 and January 5, 2010.

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 indicated that on July 13, 2007, he and the beneficiary held their engagement ceremony in Phnom Penh, Cambodia.

On March 19, 2010, the director issued a request for evidence (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 21, 2010 response to the director's RFE, the petitioner, through counsel, submitted additional documentation, including: an affidavit from the petitioner stating, in part, that he was engaged to the beneficiary in Phnom Penh, Cambodia on July 13, 2007; a Certificate of Engagement, with translation; and photographs.

The director denied the petition because the petitioner failed to establish that he and the beneficiary had met, as required under section 214(d)(1) 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 states that a previously approved I-129F petition filed by the petitioner on behalf of the beneficiary was delayed at the U.S. Embassy in Phnom Penh, Cambodia, due to confusion over information on the petitioner's naturalization certificate. Counsel states further that, after the certificate was corrected, the petitioner was required to file a new petition, as the timeframe allowed for the beneficiary to enter the United States had expired. Counsel states that the petitioner requests a waiver of the in-person meeting requirement, as the documentation substantiates that he and the beneficiary did meet in person and properly filed the I-129F petition. As supporting documentation, the petitioner submits: a copy of the previously filed I-129F petition filed by the petitioner on behalf of the beneficiary; a copy of the receipt notice for the previous I-129F petition filed by the petitioner on September 14, 2007, on behalf of the beneficiary; a copy of the approval notice reflecting that the same petition was approved on February 5, 2008, valid from February 5, 2008 to June 5, 2008; a copy of the petitioner's initial Certificate of Naturalization; copies of correspondence between counsel and the U.S. Embassy in Phnom Penh, Cambodia; and copies of previously submitted documentation.

As discussed above, the petitioner and the beneficiary were required to have met in person between January 5, 2008 and January 5, 2010. The petitioner has submitted evidence of a previously approved I-129F petition filed by him on behalf of the beneficiary, along with evidence of his and the beneficiary's in-person meeting on July 13, 2007. On appeal, counsel asserts that the instant petition should be approved because the documentation substantiates that the petitioner and the beneficiary did meet in person and properly filed the I-129F petition. 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). Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In this case, the petition was filed on January 5, 2010, and thus the petitioner and the beneficiary were required to have met in person between January 5, 2008 and January 5, 2010. Since this has not occurred, it is concluded that the petition may not be approved.

Beyond the decision of the director, 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. For this additional reason, the petition may not be approved. Accordingly, the appeal is dismissed.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, he 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.