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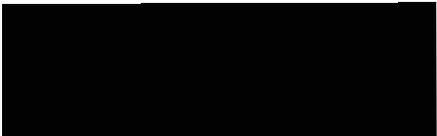
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: **MAR 13 2009**

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)

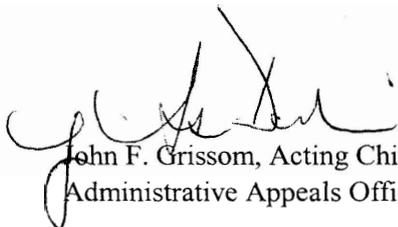
ON BEHALF OF PETITIONER:



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).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Kenya, 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 petition because the petitioner failed to establish that he and the beneficiary met in person within the two years immediately preceding the filing of the petition.

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who 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 entry. . . .

Section 214(d) of the Act, 8 U.S.C. 1184(d), 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 two 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 September 5, 2007. Because section 214(d) of the Act states that the petitioner and the beneficiary must have met in person within two years before the filing of the petition, the petitioner should have met the beneficiary in person sometime between September 5, 2005 and September 5, 2007. The petitioner responded “no” to the question on the I-129F Petition about whether he and the beneficiary had met in person within the two years before the filing of the petition. In response to the director’s January 10, 2008 Request for Evidence (RFE), the petitioner stated that he first met the beneficiary in [REDACTED] and had known her since childhood, and that he and the beneficiary were engaged in [REDACTED] on June 5, 2004. He also stated that he was unable to visit the beneficiary between September 5, 2005 and September 5, 2007, due to extreme financial hardship and their customs and traditions, and that, after he returned from his military deployment, he visited the beneficiary in Pune, India from January 31 through February 16, 2007.

The director denied the petition because the petitioner and beneficiary had not met in person during the required time period.

On appeal, counsel states, in part:

[Section 101(a)(15)(K) of the Act] clearly does not mandate of the parties to meet in person before or after filing of the I-129F in question. It is sufficient they met previously and courtship was maintained after filing. . . . Additionally, the [petitioner] is an active member of the Armed Forces of the United States, he was deployed in the Middle East. The nature and circumstances of his job [make] it impossible to leave his assignment, except in an emergency, like his visit to Pune, India in 2008. (Fiancée was in an accident).

As supporting documentation, the petitioner, through counsel, submits: a letter, dated August 6, 2008, from the petitioner; a letter, dated July 29, 2008, from The National Muslim Council of Tanzania; a letter, dated August 1, 2008, from [REDACTED] NCOIC, Executive Support, at Langley Air Force Base (AFB), Virginia; a memorandum, dated August 11, 2008, from [REDACTED] Capt, USAF, at Lackland AFB Texas; an “Official Proof of Service Letter” dated July 29, 2008, for the petitioner from the Headquarters Air Force Personnel Center at Randolph AFB Texas; the petitioner’s DD Form 1966/1, Record of Military Processing – Armed Forces of the United States; a “Special Order” issued to the petitioner on April 17, 2006 from the Department of the Air Force, Lackland AFB Texas; a copy of Form AF IMT 899, Request and Authorization for Permanent Change of Station – Military, for the petitioner; a Special Order issued on August 18, 2007, from the Department of the Air Force at Langley AFB, Virginia; and training certificates issued to the petitioner from the United States Air Force.

The petition is not approvable. The law clearly states that the petitioner and beneficiary must have met in person within the two years before the filing of the petition, which in this case is from September 5, 2005 through September 5, 2007. The AAO acknowledges the following: the petitioner’s assertions in his August 6, 2008 statement that he was not able to meet the beneficiary from September 5, 2005 through September 5, 2007, due to their strict customs and religious traditions, and that he took emergency leave to go to Pune, India to see the beneficiary from January 31 - February 16, 2008 because she was involved in an accident; the August 1, 2008 memorandum from [REDACTED] Langley AFB, Virginia, stating, in part, that the petitioner visited the beneficiary after she was involved

in an accident; the August 11, 2008 memorandum from ██████████ Ch, Capt, USAF, Lackland AFB Texas, stating: "According to the Islamic Law a man and a woman are not allowed to date, and physically interact until after marriage. . . ."; and the July 29, 2008 letter from The National Muslim Council of Tanzania, stating that the petitioner and the beneficiary were engaged on June 5, 2004, and that the long-established cultural and religious customs and traditions in ██████████ forbid the bride and groom to meet in person after their engagement until their marriage, unless they have a family emergency or health problem.

The letter from The National Muslim Council of Tanzania discusses the long-established cultural and religious customs and traditions in Dar es Salaam, Tanzania, and the memorandum from ██████████ ██████████ Capt, USAF discusses religious and cultural practices in accordance with Islamic law. The AAO notes that Citizenship and Immigration Services (CIS) has experience with similar applications and relies on information provided by Imam Islamic Foundation of North America, which states,

It is declared that according to Islamic Law and practices, any adult Muslim boy or girl are not allowed to date or meet his/her partner before marriage. However, for finalizing the decision of marriage, it is permissible for both to see each other in the presence of their families.

Moreover, in his February 18, 2008 letter submitted in response to the director's RFE, the petitioner stated that after he returned from his deployment, he made the decision to go visit the beneficiary from January 31 - February 16, 2008, and that they spent some quality time together. He did not mention that the beneficiary had been in an accident or that his decision to visit the beneficiary was based on an accident suffered by the beneficiary. Nor did the beneficiary or her parents mention any accident in their statements that were submitted in response to the RFE. The record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988).

It is also noted that the "Official Proof of Service Letter" reflects the petitioner's date of enlistment in the United States Air Force as March 14, 2006. Thus, although counsel, the petitioner, and ██████████ ██████████ USAF, all state that the nature and circumstances of the petitioner's job make it impossible for him to leave his assignment, the two years immediately preceding the filing of the petition actually began prior to the petitioner's March 14, 2006 enlistment date. As discussed above, in accordance with section 214(d) of the Act, the petitioner should have met the beneficiary in person sometime between September 5, 2005 and September 5, 2007. Thus, there were several months prior to the petitioner's March 14, 2006 enlistment during which the petitioner could have complied with the meeting requirement.

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. As the petitioner claims that he met the beneficiary in February 2008, he may file a new I-129F Petition, and include documentary evidence of having met the beneficiary in person within the two years before the filing of the petition. 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.