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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: California Service Center Date: APR 22 2003

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: Petition for Alien Fiancé(e) under Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of the United States. The beneficiary is a native and citizen of Vietnam. The director denied the petition after determining that the petitioner and the beneficiary had not met each other within the two-year period prior to the July 19, 2002, filing date of the visa petition.

On appeal, counsel states that the cost of traveling to Vietnam is prohibitive. Counsel further states that the petitioner has no vacation time from work and is not eligible for new vacation time until mid-2003. The record contains a letter from the petitioner's employer dated November 8, 2002, in which it is stated that the petitioner has vacation and personal/sick time available each year, however, he has no time remaining since May of (2002). This does not address the issue of the petitioner and the beneficiary meeting during the two years prior to the July 19, 2002 filing of the petition.

In addition, counsel states that the petitioner's painful medical issue requires ongoing care. The record contains a letter from Dr. [redacted] dated November 27, 2002, in which he states that the surgical treatment of the petitioner's fracture is complete but he may need additional treatment from a general dentist. There is no evidence in the record to show that a brief trip would interrupt any type of treatment that the petitioner may need from a general dentist.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

> (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
>
> (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
>
> (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

Section 214(d) of the Act, 8 U.S.C § 1184(d), provides that the petitioner must establish that he or she and the beneficiary have

met in person within two years immediately before the petition is filed.

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 at section 214.2 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.

In the instant case, the reasons given by the petitioner for not having met the beneficiary within two years prior to filing the petition do not support a finding that compliance with the requirement would cause extreme hardship to the petitioner. The expense involved in traveling to a foreign country and scheduling time off are normal difficulties encountered in complying with the requirement and are not considered extreme hardship.

The burden is on the petitioner to provide satisfactory evidence that extreme hardship would be imposed on him to comply with the two-years requirement. In this case, the petitioner has made no claims concerning the possible violation of strict and long-established customs.

Therefore, the appeal will be dismissed. This action is taken without prejudice to consideration of a new and fully documented fiancée visa petition.

ORDER: The appeal is dismissed.