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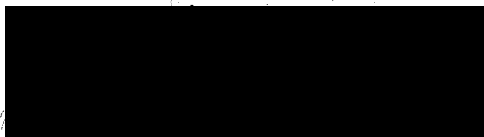
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
WAC 03 210 53807

Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Alien Fiancé(e) Pursuant to Section 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 the Fiji Islands, as the fiancé of a United States citizen pursuant to section 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 after determining that the petitioner had not established that he and the beneficiary had personally met within the two-year period immediately preceding the date of filing of the petition, as required by section 214(d) of the Act. Further, the director found that the petitioner failed to establish that meeting as required would violate strict and long-established customs of the beneficiary's foreign culture or social practice. *Decision of the Director*, dated March, 23, 2004.

Section 101(a)(15)(K) of 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), states, in pertinent part, that a fiancé(e) petition:

. . . shall 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 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.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on July 10, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 10, 2001 and ended on July 10, 2003.

At the time of filing, the petitioner stated that he had not previously met the beneficiary. In response to the director's notice of intent to deny, the petitioner stated that Hindu custom, culture and social practices allowed him to marry the beneficiary without having met her. Further, he contended that legal issues prevented him from leaving the United States and submitted a letter from his lawyer stating that the terms of his probation did not allow him to leave the State of California. Asserting that compliance with the meeting requirement would have imposed a hardship on him, the petitioner requested an exemption under 8 C.F.R. § 214.2(k)(2).

On appeal, the petitioner again references his inability to travel outside the United States and states that he is not required to meet the beneficiary before marrying her. However, the petitioner's ability to marry the beneficiary without having met her is not the basis of the director's denial. The reason the director denied the instant petition is that the petitioner failed to comply with the statutory requirement that he have personally met the beneficiary during the two-year time period immediately preceding his filing of the Form I-129F.

Although section 214(d) of the Act requires the petitioner and beneficiary to have met between July 10, 2001 and July 10, 2003, it does not require the petitioner to travel to the beneficiary's home country, nor to marry the beneficiary in the home country. As a result, the legal issues that prevent the petitioner's travel outside the United States do not constitute a basis for exempting him from the meeting requirement. The record on appeal does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to the Fiji Islands, specifically the beneficiary's travel to the United States to meet the petitioner and his family. Further, although the petitioner, at the time of filing, asserted that Hindu custom and practice precluded a meeting with his fiancée prior to marriage, he has offered no evidence in support of this statement.

Therefore, taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find the record to establish that compliance with the meeting requirement would have resulted in extreme hardship to the petitioner or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that exempt a petitioner from the meeting requirement of section 214(d) of the Act. Accordingly, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.



ORDER: The appeal is dismissed.