



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
SRC 04 105 50563

Office: TEXAS SERVICE CENTER

Date: JUL 18 2005

IN RE:

Petitioner:
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 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, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Colombia, 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 and the beneficiary had not personally met within the two years immediately preceding the date of filing of the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated July 26, 2004.

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), 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 March 2, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 2, 2002 and ended on March 2, 2004.

At the time of filing, the petitioner indicated that she had first met the beneficiary in the United States in the winter of 2001 and that they had dated for several months before his return to Colombia. In response to the director's request for evidence of a meeting during the two years preceding the date of filing, the petitioner submitted a travel itinerary showing the beneficiary's airline reservation for a November 7, 2002 flight to Miami, Florida and copies of pages from his passport showing his return to Colombia on November 8, 2002 following the withdrawal of his application for admission. These same pages also show a U.S. admission stamp, dated September 6, 2001, and a Colombian admission stamp, dated September 3, 2002.

The director denied the petition based on her finding that the petitioner and beneficiary had not met during the two-year period preceding the filing of the Form I-129F. On appeal, the petitioner contends that, as the beneficiary did not depart the United States until September 2002, she and the beneficiary have complied with the meeting requirement at section 214(d) of the Act. The AAO agrees. The copied pages of the beneficiary's passport indicate that he was present in the United States for approximately six months of the two-year period that began on March 2, 2002. Citizenship and Immigration Services databases also confirm his presence in the United States until September 2002. Accordingly, the appeal will be sustained. The petition will be approved.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.