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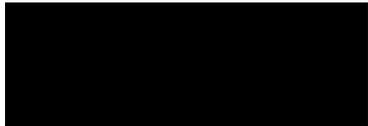


U.S. Citizenship
and Immigration
Services

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MAR 10 2005



FILE: [REDACTED]
WAC 03 211 51874

Office: CALIFORNIA SERVICE CENTER

Date:

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 citizen of the United States who seeks to classify the beneficiary, a native and citizen of Mexico, as the fiancée 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 offered documentation evidencing that he and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated March 25, 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 14, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 14, 2001 and ended on July 14, 2003.

In response to the director's request for evidence and additional information, the petitioner failed to submit documentation evidencing a meeting between the petitioner and the beneficiary during the two-year period immediately preceding the filing of the Form I-129F petition. The petitioner submitted a copy of a United States passport issued to him reflecting admission to Mexico on February 20, 2001 and departure on March 30, 2001 and an airline standby flight coupon/receipt issued on January 28, 2002.

On appeal, the petitioner states that no one introduced him to the beneficiary. *Form I-290B*, dated April 20, 2004. The petitioner submits nine color photographs of the petitioner and the beneficiary together, not film-dated; copies of email messages and telephone bills written in Spanish without English translations; a copy of an identification document for the beneficiary; a passenger receipt written in Spanish, dated March 31, 2004 and a Mexican customs form written in Spanish, dated March 31, 2004.

The record fails to demonstrate that the petitioner and the beneficiary met between July 14, 2001 and July 14, 2003 as required under section 214(d) of the Act. Although the petitioner submits photographs of he and the beneficiary together, the record fails to establish when their meeting(s) occurred. As indicated in the Evidence Request sent to the petitioner by the director, photographs are considered as secondary evidence and must be original film-dated photographs. In addition, the Evidence Request informed the petitioner that any "document written in another language other than English shall be submitted with a full English translation." *Attachment to Form I-797*, dated January 28, 2004. The AAO is unable to consider the submitted documents written in Spanish in the absence of a certified English translation.

In the absence of substantiating documentation, the provided evidence is inconclusive as to whether or not the petitioner and beneficiary met as required. Further, the record does not establish 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. Therefore, 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.