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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 17 2009**
WAC 08 095 50058

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

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)

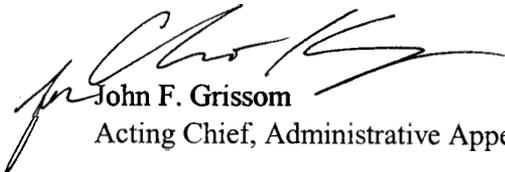
ON BEHALF OF PETITIONER:

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.

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 California Service Center director denied the nonimmigrant visa petition and the matter 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 India, 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.

On appeal, the petitioner's father submits a statement, and the petitioner submits copies of email messages as well as a Form G-325A for the beneficiary and him.

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

Subject to subsections (d) and (p) of section 214, an alien who –

(i) an alien who is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I)) 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)(1) of the Act, 8 U.S.C. § 1184(d)(1), 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, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person.

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 petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with U.S. Citizenship and Immigration Services on February 15, 2008. Therefore, the petitioner and beneficiary were required to have met in person sometime between February 15, 2006 and February 15, 2008. In response to question #18, which asks whether the petitioner and the beneficiary had met within the two-year period immediately preceding the filing of the petition, the petitioner responded “no.” The petitioner wrote: “we will not meet before marriage because of religious reasons.” The petitioner did not, however, provide any further explanation of the religious reasons that prohibited him and the beneficiary from meeting in person prior to marriage.

In a June 23, 2008 Request for Evidence (RFE), the director requested, among other items, evidence to establish that the petitioner and beneficiary met in person within the required timeframe or, in the alternative, evidence to establish why the requirement of an in-person meeting should be waived. In response, the petitioner submitted a copy of an email message to show that the petitioner had purchased an airline ticket from Utah to Bombay, India for a flight in March 2008. The petitioner also submitted a copy of a photograph of him and the beneficiary together with a hand-written caption of “July 2008.” The petitioner did not submit any other evidence to address whether he had met the beneficiary during the required period or to request that such a requirement be waived.

In denying the petition, the director acknowledged the evidence that the petitioner had submitted to show he had met the beneficiary, but noted that this evidence showed that an in-person meeting took place after the petition was filed, not during the requisite period, which was from February 15, 2006 through February 15, 2008. The director also stated that the petitioner failed to provide any evidence to show why the requirement of an in-person meeting should be waived.

On appeal, the petitioner’s father states that his son’s and the beneficiary’s marriage has been arranged according to Islamic customs, and that his son was financially unable to travel to India before March 2008. The petitioner’s father states that both his son and the beneficiary are a nice couple and should be allowed to marry in the United States. The petitioner submits copies of email correspondence between him and the beneficiary to show their continued relationship.

The evidence submitted on appeal in support of the petition is insufficient to overturn the director’s decision. Initially, the petitioner claimed that he could not meet the beneficiary prior to marriage because of “religious reasons.” Although the regulation 8 C.F.R. § 214.2(k)(2), provides, in part, for a waiver of the in-person meeting requirement if compliance with such would violate strict and long-established customs of the beneficiary’s foreign culture or social practice, the petitioner did not, state what these religious reasons were or elaborate on his brief statement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO notes that the petitioner did meet the beneficiary prior to their marriage, which not only contradicts his claim that certain religious customs would have prohibited such a meeting, but also

establishes that an in-person meeting would not violate any customs of the beneficiary's culture or social practice. Although the required meeting did take place, it did not occur within the two-year period prior to the filing of the petition, which is required by law.

The petitioner's father states on appeal that his son could not travel to India until March 2008 due to financial constraints. In addition to waiving the requirement for an in-person meeting due to cultural or social practice reasons, the regulation 8 C.F.R. § 214.2(k)(2) also provides for a waiver of the requirement if such a meeting would result in extreme hardship to the petitioner. The regulation does not define what may constitute extreme hardship to the petitioner and, 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 lack of money required to buy a plane ticket or other mode of transportation would not qualify to waive the requirement of an in-person meeting during the required time period. As evidenced by the petitioner's ability to travel to India one month after he filed the petition, one's financial situation can change within a short amount of time.

Based upon the above discussion, the director's decision to deny the petition will not be disturbed. 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.