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U.S. Citizenship and Immigration Services

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FEB 02 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 202 52831

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

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 Philippines, 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.

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 the Immigration and Naturalization Service [now Citizenship and Immigration Services] on November 20, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 20, 2000 and ended on November 20, 2002.

In response to the director's request for evidence that meeting the beneficiary as required would result in extreme hardship to the petitioner, the petitioner submitted a letter from his employer, the U.S. Postal Service, stating that the petitioner was unable to take leave from his job for more than one week during the relevant two-year period.

On appeal, counsel contends that compelling reasons exist to exempt the petitioner from the two-year meeting requirement. Counsel points to the petitioner's work schedule, his need to care for his children and his elderly mother and the expense of traveling to the Philippines from the United States as evidence of extreme hardship to the petitioner. Counsel further states that the purpose of the two-year meeting requirement is to prevent mail order brides from obtaining visas and therefore, should not apply to the petitioner and the beneficiary. *See* Brief in Support of Appeal, dated June 24, 2003.

The petitioner's lack of time and money to travel to the Philippines does not constitute extreme hardship to the petitioner pursuant to 8 C.F.R. § 214.2(k)(2). The expense and time commitment required for travel to a foreign destination are common requirements to those filing a Form I-129F. The record demonstrates that the petitioner has traveled to the Philippines several times to see the beneficiary in the past. *See* Attachment to Petition for Alien Fiancé(e) (Form I-129F), submitted November 20, 2002. Further, section 214(d) of the Act requires that the petitioner and the beneficiary meet; it does not require the petitioner to travel to the beneficiary's home country. Counsel states that the petitioner "is informed that his Beneficiary/fiancé [sic] had previously attempted to obtain a visitor's visa from the Manila consulate and her application was denied." *Id.* at 3-4. The record does not provide evidence of a denial of a visitor visa for the beneficiary beyond this speculative assertion. Further, the record does not demonstrate any efforts by the petitioner and the beneficiary to explore additional meeting options including travel to a bordering country.

The evidence of record does not establish that the petitioner and beneficiary met as required. Despite the assertions of counsel, the AAO finds that the two-year meeting requirement applies to the petitioner and the beneficiary and not solely in cases "wherein aliens would enter the United States without ever personally meeting the U.S. citizen petitioner." *Id.* at 4. 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.