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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship
and Immigration
Services

[Redacted]

MAR 11 2004
Date:

FILE: [Redacted]
WAC 03 056 50710

Office: CALIFORNIA SERVICE CENTER

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:
[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

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 sustained.

The petitioner is a 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 established grounds to warrant a favorable exercise of the Director's discretion to exempt the personal meeting requirement under section 214(d) of the Act. *See* Decision of the Director, dated March 18, 2003.

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 December 10, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 10, 2000 and ended on December 10, 2002.

In conjunction with the initial filing of the Form I-129F petition, the petitioner submitted a letter from his treating physician stating that the petitioner suffers from rectal prolapse and therefore, he is unable to embark on air travel. *See* Letter from Dwight James, MD, dated October 25, 2002.

On appeal, counsel submits a brief, dated May 15, 2003; an additional letter from Dr. James, dated May 14, 2003; a photograph depicting rectal prolapse, a medical condition from which the petitioner suffers and copies of the Philippine passport issued to the beneficiary reflecting denial of a visitor visa to enter the United States.

The record contains evidence corroborating counsel's assertion that the petitioner is not only unable to fly, but is unable to travel to a bordering country to meet with the beneficiary. *See* Letter from Dwight James, MD, dated May 14, 2003. Further, the AAO notes that the record provides evidence of a denial of a visitor visa to the United States for the beneficiary evidencing that she is unable to travel to the petitioner in the absence of an approved Form I-129F petition.

The evidence of record establishes that compliance with the meeting requirement would result in extreme hardship to the petitioner. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.