

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

Identifying information deleted to
prevent disclosure of information
invasion of personal privacy
warranted



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]
WAC 02 288 51133

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 06 2004**

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, 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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, 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 two years before the date of filing the petition, as required by section 214(d) of the Act. *See* Decision of the Director, dated October 15, 2003.

On appeal, counsel asserts that the evidence submitted establishes that the petitioner and the beneficiary met as required in December 2000 and that the denial by the Immigration and Naturalization Service [now Citizenship and Immigration Services] is a misapplication of the law and its intent. *See* Brief in Support of the Motion for Reconsideration/Appeal for Alien Fiance/e Petition, dated November 7, 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 October 23, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 23, 2000 and ended on October 23, 2002.

In response to the director's request for evidence and additional information concerning the parties' last meeting, the petitioner submitted copies of airline ticket stubs marked with a date, but no year; copies of receipts for airline tickets and a photograph of the petitioner and the beneficiary together.

On appeal, counsel submits a copy of the U.S. passport issued to the petitioner reflecting entry into the Philippines on December 25, 2000 and exit from the Philippines on January 26, 2001; a letter from the petitioner, dated October 30, 2003 and four color copies of photographs, three of which feature the petitioner and the beneficiary together. In her letter, the petitioner explains the circumstances under which she and the beneficiary met in the Philippines during December 2000.

The AAO finds that the evidence on appeal establishes compliance with the meeting requirement under section 214(d) of the Act. Therefore, the appeal will be sustained.

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