

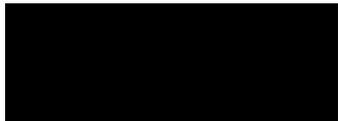
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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DC

FILE:

[Redacted]
EAC 04 004 52529

Office: VERMONT SERVICE CENTER

Date:

AUG 05 2005

IN RE:

Petitioner:
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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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. Wieman

Robert P. Wieman, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Vermont 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 Colombia, 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 acting director denied the petition after determining that the petitioner and the beneficiary had not personally met within the two years immediately preceding the date of filing of the petition, as required by section 214(d) of the Act. Although the director found the petitioner to have demonstrated that such a meeting would have imposed an extreme hardship on him, she, nevertheless, denied the petition because the petitioner had not also demonstrated that such a meeting would have violated the customs of the beneficiary's culture or social practice. *Decision of the Acting Director*, dated April 26, 2004.

Section 101(a)(15)(K) of the Immigration and Nationality Act (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 November 25, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 25, 2001 and ended on November 25, 2003.

At the time of filing, the petitioner indicated that he had not personally met the beneficiary, providing documentation to show he served as a caretaker for his brother who was receiving out-patient psychiatric treatment and that he was a witness in a court case that had been on the trial calendar since April 2001. Therefore, the evidence of record does not establish that the petitioner complied with the meeting requirement of section 214(d) of the Act.

In his March 21, 2004 response to the acting director's request for evidence, the petitioner again stated that a pending lawsuit prevented him from traveling to meet the beneficiary. He further indicated that, based on his advice, the beneficiary, who had been scheduled for a nonimmigrant visa interview at the U.S. embassy in Bogota on October 27, 2003, had cancelled her appointment. The petitioner also submitted a letter from his legal counsel in the lawsuit providing updated information regarding developments in the case.

On appeal, the petitioner states that extreme circumstances prevented his meeting with the petitioner. He indicates that the beneficiary approached the U.S. embassy in 2002 to obtain a U.S. tourist visa but was unable to obtain an appointment until October 27, 2003. He states that he advised her to cancel her visa interview because he felt it was not right to have two petitions "running" at the same time.

The AAO notes that, on May 14, 2005, the petitioner submitted documentation to show that he traveled to Colombia on March 19, 2005 to meet the beneficiary. However, the petitioner's 2005 meeting with his fiancée does not fall within the two-year period immediately preceding his filing of the Form I-129F. As a result, it cannot satisfy the requirements of section 214(d) of the Act.

The petitioner has offered several documented reasons he was unable to travel to see the beneficiary during the specified meeting period. The director found this evidence sufficient to establish that a meeting with the beneficiary would have imposed an extreme hardship on him. The AAO does not agree. While section 214(d) of the Act requires the petitioner and beneficiary to meet, it does not require the petitioner to travel to the beneficiary's home country. Therefore, the inability of a petitioner to travel does not, in itself, meet the requirements of extreme hardship.

In the instant case, the record establishes that the beneficiary was prepared to travel to the United States to meet the petitioner. The petitioner has stated that the beneficiary had a visa interview scheduled for October 27, 2003, a date falling within the specified two-year period, and that she cancelled this appointment based on his advice.

Therefore, the petitioner is unable to establish that a meeting with the beneficiary could not have occurred, despite the restrictions placed on his travel. The AAO also notes that the petitioner's statements regarding his reasons for advising the beneficiary to cancel her visa interview are not supported by the record. He has indicated that he told the beneficiary to cancel her appointment because he did not want to have the beneficiary's nonimmigrant visa petition being processed at the same time as the Form I-129F. However, the beneficiary's interview was scheduled to occur on October 27, 2003, a month ahead of the date on which the petitioner filed the Form I-129F.

Taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find that compliance with the meeting requirement would have resulted in extreme hardship to the petitioner or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that exempt a petitioner from this requirement. 8 C.F.R. § 214.2(k)(2). 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 I-129F petition in the beneficiary's behalf so that a new two-year period in which the parties are required to have met will apply.

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.