



U.S. Citizenship
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FILE: [Redacted]
SRC 04 099 52307

Office: TEXAS SERVICE CENTER Date: AUG 05 2005

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: 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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and 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 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 failed to establish that he and the beneficiary had personally met within the two-year period preceding the filing the petition, as required by section 214(d) of the Act, and had failed to demonstrate that such a meeting would have imposed an extreme hardship to him or violated the customs of the beneficiary's culture or social practice. *Decision of the Director*, dated June 21, 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 March 5, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on March 5, 2002 and ended on March 5, 2004.

At the time of filing, the petitioner indicated that he had not personally met the beneficiary, noting his need to care for his elderly parents and his son. Therefore, the evidence of record does not establish that the petitioner complied with the meeting requirement of section 214(d) of the Act.

On appeal, the petitioner states that, as of July 2004, he was still in the first year of his employment as a correctional officer and could not take vacation until October 2004. He further provides documentation of what he asserts was a daily commitment to ensure that his 17-year-old son, who was then on probation, met the requirements of that probation. On February 24, 2005, the petitioner submitted a letter indicating he would be traveling to The Philippines on March 18, 2005 to meet the beneficiary. He subsequently provided copies of pages from his U.S. passport and his photograph with the beneficiary to document that meeting.

Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between March 5, 2002 and March 5, 2004. Although the petitioner offered reasons why he was unable to travel as of March 5, 2004, he did not address the impediments he believed precluded a meeting with the beneficiary during the entire two-year period. Further, although 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. The record on appeal does not, however, demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to The Philippines, including, but not limited to the beneficiary traveling to meet the petitioner in the United States or a country near the United States. 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 him 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 the meeting requirement of section 214(d) of the Act. 8 C.F.R. § 214.2(k)(2). Therefore, the appeal will be dismissed.

While the AAO notes the petitioner's travel to The Philippines in March 2005, his meeting with the beneficiary at that time falls outside the two-year period that immediately preceded his filing of the Form I-129F. As a result, it does not satisfy the requirements of section 214(d) of the Act.

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 on 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.