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**U.S. Citizenship
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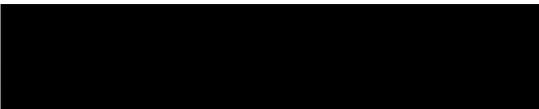
EAC 04 124 50149

Office: VERMONT SERVICE CENTER

Date: **AUG 31 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. Wiemann, 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 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 acting director denied the petition after determining that the record did not establish that the petitioner and beneficiary had personally met within the two-year period immediately preceding the filing of the petition, as required by section 214(d) of the Act. She further determined that the petitioner had failed to prove that his compliance with that requirement would have constituted an extreme hardship on him or would have violated the customs of the beneficiary's culture or social practice. *Decision of the Acting Director*, dated July 15, 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 19, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 19, 2002 and ended on March 19, 2004.

At the time of filing, the petitioner stated he and the beneficiary had not previously met, noting that he had not had a chance to travel overseas. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

In response to the director's June 2, 2004 request for any evidence that might establish his eligibility for an exemption from the meeting requirement, the petitioner stated that leaving the United States to meet the beneficiary could have resulted in the loss of his employment and jeopardized his responsibilities to his family and his finances. The petitioner's statements do not, however, establish his eligibility for an exemption of the meeting requirement under 8 C.F.R. 214.2(k)(2).

Although section 214(d) of the Act requires the petitioner and beneficiary to have met during the two-year period preceding the filing of the Form I-129F, it does not stipulate that the petitioner must 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. Further, the employment, family and financial obligations cited by the petitioner do not exempt him from the meeting requirement. These same obligations are common concerns among individuals who wish to file Form I-129F petitions. As a result, they do not constitute extreme hardship.

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. Therefore, the appeal will be dismissed.

On appeal, the petitioner also states that he intends to travel to The Philippines and to marry the petitioner there. He asks if there are any laws or regulations that prohibit his marriage.

The petitioner may marry the beneficiary in The Philippines and may still submit a Form I-129F to bring her to the United States under section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K). However, the law and regulations that govern the adjudication of a Form I-129F filed on behalf of a spouse differ from those that apply to a Form I-129F filed for a fiancé(e).

The Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000), has changed the language of section

101(a)(15)(k) of the Act. U.S. citizens may now file Form I-129F fiancé(e) petitions for their spouses, if they have already submitted Form I-130 alien relative petitions on their behalf.

Section 101(a)(15)(k)(ii) of the Act, 8 U.S.C. § 1101(a)(15)(k)(ii), states, in part, that an alien who—

(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....

8 C.F.R. § 214.2(k)(7) provides, in part:

To be classified as a K-3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K-4 child of such alien defined in section 101(a)(15)(k)(ii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I-130, Petition for Alien Relative, and the beneficiary of an approved petition for a K-3 nonimmigrant visa filed on Form I-129F....

The denial of the petition is without prejudice. If the petitioner has met the beneficiary, he may file a new I-129F petition on her behalf so that a new two-year meeting period will apply. If he has married the beneficiary, he may also submit a new I-129F petition for her once he has filed a Form I-130 immigrant visa petition on her behalf.

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.