



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date: **DEC 23 2005**

WAC 05 012 53545

IN RE:

Petitioner:

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

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 dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ghana, 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 of the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated April 20, 2005.

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 does not, however, 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 October 12, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on October 12, 2002 and ended on October 12, 2004.

At the time of filing, the petitioner indicated that he and the beneficiary had been dating since 1995, but did not state whether he and the beneficiary had met during the specified period. In response to the director's request for evidence, the petitioner stated that he had not seen his fiancée during the previous two years and requested an exemption from the meeting requirement, citing his military service. To support his request for an exemption, the petitioner submitted a memorandum signed by his immediate military superior stating that he could not be spared from duty during the ten-month period ending January 24, 2005; a copy of his military orders, dated February 20, 2003, assigning him to duty in Korea; and a sworn statement to the effect that his military service prevented his travel to Ghana to meet the beneficiary during the two years immediately preceding the filing of the Form I-129F.

On appeal, the petitioner again submits the above documents as proof he was unable to travel to meet the beneficiary during the specified period. However, the challenge of coordinating overseas travel with other responsibilities, including those involving military service, is faced by many individuals who wish to file Form I-129Fs. As a result, the petitioner's military service does not provide a basis on which he may be exempted from the meeting requirement of section 214(d) of the Act. Moreover, while section 214(d) of the Act requires a petitioner and beneficiary to have met during the two-year period immediately 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 Ghana, including the beneficiary traveling to meet the petitioner in 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 other basis on which a petitioner may be exempted 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.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Should the petitioner and beneficiary meet, he may file a new Form 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.