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U.S. Citizenship
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FILE: [REDACTED]
WAC 04 007 52824

Office: CALIFORNIA SERVICE CENTER Date: **JUL 18 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:

[REDACTED]

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, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Mexico, 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 record failed to establish that the petitioner and the beneficiary had personally met during the two-year period that preceded the date of filing, as required by section 214(d) of the Act. *Decision of the Director*, dated August 4, 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 October 9, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 9, 2001 and ended on October 9, 2003.

At the time of filing, the petitioner indicated that she had previously met the beneficiary but did not state whether a meeting had occurred during the two years immediately preceding her filing of the Form I-129F. In response to the director's request for evidence, counsel submitted documentation to establish that the petitioner had met the beneficiary during the October 9, 2001 to October 9, 2003 time period. Evidence related to that meeting included: a copy of pages from the petitioner's passport to show that the petitioner had entered Mexico on June 5, 2003, copies of pages from the petitioner's bank statements showing purchases made in Mexico in July 2002 and June 2003, and undated photographs of the petitioner and beneficiary.

On appeal, counsel submits a brief and again provides a copy of the petitioner's bank statements.

The petitioner has submitted documentation to establish that she met the beneficiary during the two-year period immediately preceding her filing of the Form I-129F. She has provided copies of the face page of her passport and a second page showing a Mexican admission stamp for June 5, 2003. However, as already noted by the director, the second page on which the admission stamp appears does not come from the petitioner's passport. Therefore, it will be discounted by the AAO as proof that the petitioner met the beneficiary during the two-year period prior to her filing of the Form I-129F. The AAO will also discount the photographs of the petitioner and the beneficiary as they are undated and cannot establish that the petitioner and beneficiary met during the specified time period.

However, the petitioner's bank statement for the period July 12-August 12, 2002 and another dated July 11, 2003 indicate that her Bank of America check card was used in Durango during July 2002 and in both Durango and Mazatlan during June 2003. The AAO finds, therefore, that the petitioner has established she was in Durango, Mexico, the city in which the beneficiary resides, during the two-year period preceding her filing of the instant petition and has met the meeting requirement of section 214(d) of the Act. Accordingly, the appeal will be sustained. The petition will be approved.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.