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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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DG

FILE:

[REDACTED]
SRC 04-154 53381

Office: TEXAS SERVICE CENTER

Date: JUN 09 2005

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, 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 Thailand, 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 within two years before the date of filing the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated October 27, 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 May 17, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 17, 2002 and ended on May 17, 2004.

At the time of filing, the petitioner indicated that she had not previously met the beneficiary. In response to the director's request for evidence, the petitioner stated that the health problems and death of her mother, her employment as a neonatal nurse and the cost of a trip to Thailand had prevented her from traveling to meet the beneficiary. She also noted that the beneficiary was not in a financial position to travel to the United States. Therefore, the evidence of record establishes that the petitioner has not complied with the meeting requirement of section 214(d) of the Act.

On appeal, the petitioner provides documentation of a trip to Thailand in October 2004 to meet the beneficiary. Such travel, however, falls outside the two-year time period during which the petitioner must have met the beneficiary -- May 17, 2002 and May 17, 2004 -- and cannot, therefore, satisfy the requirement of section 214(d) of the Act.

The petitioner has indicated that she did not travel to meet the beneficiary during the two-year period immediately preceding her filing of the Form I-129F because of her mother's health concerns and ultimate death. However, although section 214(d) of the Act requires that the petitioner and beneficiary meet, it does not require the petitioner to travel to the beneficiary's home country. The record on appeal does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Thailand, including, but not limited to, the beneficiary traveling to meet the petitioner in the United States. Although the petitioner has stated that neither she or the beneficiary could afford the price of an airline flight between the United States and Thailand, the cost required for travel to a foreign country by a petitioner or a beneficiary is a concern for many U.S. citizens who wish to file a Form I-129F. Therefore, the financial and time commitments required for travel to a foreign country do not constitute extreme hardship to a petitioner. Taking into account the totality of the circumstances, as described by the petitioner, the AAO does not find that she has established that compliance with the meeting requirement would have resulted in extreme hardship to her 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. Accordingly, 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 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.