



U.S. Citizenship
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FILE: [Redacted]
LIN 04 121 54031

Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

MAY 17 2005

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 of the Administrative Appeals Office 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, Nebraska 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 of the Philippines and resident of Hong Kong, 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 not offered documentation evidencing that he 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. Further, the director determined that the petitioner had not submitted credible documentary evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. *Decision of the Director*, dated August 12, 2004.

Section 101(a)(15)(K) of 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 22, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 22, 2002 and ended on March 22, 2004.

On the Form I-129F petition, the petitioner indicated that he and the beneficiary had not met. The petitioner stated that he has a fear of flying and sought treatment in the hopes of becoming able to fly. The petitioner indicated that the doctor from whom he sought treatment wanted to prescribe medication to the petitioner, but the petitioner refused. The petitioner failed to provide divorce decrees evidencing the termination of the prior marriages of the petitioner and the beneficiary.

On appeal, the petitioner provides a divorce decree for the beneficiary and her former spouse and divorce decrees for the petitioner and his two former spouses.

The petitioner states that he is unable to travel by air and the beneficiary does not have "freedom to come and go" because the only people who have that option in Hong Kong are business personnel and "very wealthy" individuals. *Appeal: Statement*, dated August 24, 2004. The petitioner claims that there are no cruises leaving from the United States to Hong Kong for him to take to visit the beneficiary. *Id.*

The evidence of record does not establish that the petitioner and the beneficiary met as required. The AAO acknowledges the petitioner's assertions that he is unable to fly to meet the beneficiary and that the beneficiary is unable to travel outside of Hong Kong. *Id.* The AAO finds, however, that the record fails to contain documentation substantiating the petitioner's claims. The petitioner fails to offer testimony from a physician or other medical professional concerning the petitioner's fear of flying. The statements of the petitioner standing alone do not form the basis for a finding of extreme hardship.

Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, 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 Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.