

Identifying data deleted to
prevent identity information
regarding individual privacy

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D6



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 17 2005
LIN 03 189 53743

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: 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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the director and the AAO will be affirmed.

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 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. *Decision of the Director*, dated November 26, 2003. The decision was affirmed on appeal by the AAO. *Decision of the AAO*, dated June 25, 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 the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] on May 29, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 29, 2001 and ended on May 29, 2003.

In response to the Question #19 on the Form I-129F petition, the petitioner submitted a letter indicating that he did not travel to the Philippines to meet the beneficiary because his left leg is amputated above the knee and it would be difficult for him to reach the remote village where she resides. [REDACTED] dated May 27, 2003.

On appeal, the petitioner reiterated his handicap and stated that the beneficiary would have a difficult time obtaining a visa for travel to the United States or a third country in order to meet the petitioner. *Letter from* [REDACTED] dated December 9, 2003. The petitioner also provided copies of five pages of Internet chat between he and the beneficiary.

On motion to reconsider, the petitioner submits a letter stating that CIS did not fully understand his letter on appeal stating that the beneficiary would have a difficult time obtaining a visa for travel to the United States or a third country in order to meet the petitioner. The petitioner indicates that the beneficiary contacted the Philippine government to learn the requirements for obtaining a visitor visa. The petitioner states that the beneficiary was told she would need to deposit \$50,000 in The Philippine National Bank. The petitioner indicates that he does not have the money to place the deposit as required and is fearful that he will not receive it back based on prior experiences with The Philippine National Bank. *Letter from* [REDACTED] dated July 8, 2004.

As noted in the decision on appeal, although the petitioner states that it would be difficult for the beneficiary to leave her country, the petitioner fails to offer documentation to support his assertion. The statements of the petitioner regarding the inability of the beneficiary to travel outside of the Philippines standing alone do not form the basis for a finding of extreme hardship. The claims of the petitioner are unsubstantiated by the record.

The evidence of record does not establish that the petitioner and the beneficiary met as required. 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. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.