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U.S. Citizenship
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FILE:

EAC 04 260 50123

Office: VERMONT SERVICE CENTER

Date: NOV 18 2005

IN RE:

Petitioner:

Beneficiary:

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, Vermont 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 Cambodia, 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 January 27, 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 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 September 17, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on September 17, 2002 and ended on September 17, 2004.

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 of a meeting during the specified time period, the petitioner submitted two passport-style photographs of herself. In her February 17, 2005 appeal, the petitioner states that she failed to understand the director's request for evidence and submitted the two photographs on the advice of the National Customer Service Center. She states that she and the beneficiary met in Cambodia in June 2004 and requests 30 days to submit documentation of that meeting.

However, more than eight months later, the petitioner has submitted no evidence to establish her meeting with the beneficiary. Therefore, she has failed to satisfy the meeting requirement of section 214(d) of the Act. The record also contains no evidence that would establish that meeting the beneficiary would have constituted an extreme hardship for the petitioner or would have violated the customs of the beneficiary's culture or social practice. Therefore, the petitioner has not established a basis for exempting her from the meeting requirement. Accordingly, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. If the petitioner has proof of her June 2004 meeting with the beneficiary, she may file a new Form I-129F on the beneficiary's behalf.

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. The petition is denied.