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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 03 077 51212

Office: VERMONT SERVICE CENTER

Date: NOV 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: 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 dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Russia, 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 failed to establish that he and the beneficiary had personally met within the two-year period preceding the filing of the petition, as required by section 214(d) of the Act. The director also found the petitioner to be ineligible for an exemption from this requirement. *Decision of the Director*, dated March 30, 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 January 21, 2005. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on January 21, 2003 and ended on January 21, 2005.

At the time of filing, the petitioner indicated that he had not previously met the beneficiary, as financial constraints and employment obligations would not allow it. In response to the director's request for evidence, he submitted a copy of the February 15, 2005 child custody and visitation agreement reached with his ex-wife as proof of his inability to travel to Russia. On appeal, the petitioner states that should he travel to Russia, he will lose visitation rights.

Based on the record, the AAO does not find the petitioner to have complied with the meeting requirement of section 214(d) of the Act. Neither has he established that he should be exempted from that requirement.

The petitioner's custody/visitation agreement does not establish that he was unable to meet the beneficiary during the specified time period. Signed on February 15, 2005, the petitioner's weekly visitation schedule with his son postdates the period during which he is required to have met the beneficiary - January 21, 2003 to January 21, 2005, and, therefore, is not evidence of the arrangements that may have been in place during the specified period. However, even had the agreement been in force during that period, it would not establish that a meeting with the beneficiary would have created an extreme hardship for the petitioner. While section 214(d) of the Act requires a meeting between the petitioner and the beneficiary during the two-year period immediately preceding the filing of the Form I-129F, it does not require that the petitioner travel to the country where the beneficiary resides. The record does not, however, establish that during the specified period, the petitioner and the beneficiary exhausted all attempts to meet in person at a location that could have accommodated the petitioner's obligations. There is no evidence that the petitioner and beneficiary explored options for a meeting prior to her coming to the United States as the beneficiary of the Form I-129F filed by the petitioner. Although the petitioner indicates that the beneficiary is unable to obtain a visa to travel to "any country like Canada" and copies of the beneficiary's e mails in the record indicate that she has heard that the United States does not issue visas to unmarried women, there is no evidence offered to support such statements, e.g., a visa refusal from the U.S. or Canadian consulates in St. Petersburg. Going on record without supporting documentation is insufficient for meeting the petitioner's burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner has also claimed that his employment and the cost of traveling to Russia prevented him from having met the beneficiary during the specified period. However, many individuals who wish to file Form I-129Fs face financial concerns and employment obligations. Accordingly, they do not constitute extreme hardship. Taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find that compliance with the meeting requirement would have resulted in extreme hardship to him 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. 8 C.F.R. § 214.2(k)(2). Accordingly, the appeal will be dismissed.



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Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Should the petitioner and beneficiary meet, he may file a new Form I-129F petition on 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.