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U.S. Citizenship
and Immigration
Services

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NOV 18 2005

FILE:

Office: VERMONT SERVICE CENTER

Date:

EAC 03 238 57621

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 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 Acting 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 Colombia, 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 acting 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, and that the petitioner had not established that compliance with the meeting requirement would result in extreme hardship to the petitioner or violate strict and long-established customs of the beneficiary's foreign culture or social practice. *Decision of the Acting Director*, dated June 23, 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 August 15, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 15, 2001 and ended on August 15, 2003.

In response to the acting director's request for evidence and additional information, the petitioner failed to provide evidence of compliance with the two-year meeting requirement.

On appeal, the petitioner submits a letter stating that he and the beneficiary communicate via e-mail and telephone. The petitioner contends that the beneficiary is unable to travel due to visa constraints and because her parents will not give her permission to meet the petitioner in a third country owing to their religious beliefs. The petitioner indicates that travel would impose financial hardship on the beneficiary. He states that he previously had financial difficulties as well and indicates that since September 11, 2001, he experiences a fear of flying. Letter from [REDACTED], dated July 14, 2004. In support of these assertions, the petitioner submits a color copy of the Colombian passport issued to the beneficiary reflecting applications made to the U.S. Consulate as well as two documents written in a foreign language. In order to be considered, documents submitted in a foreign language must be accompanied by a full, complete and notarized English translation. The AAO notes that the record does not contain English translations for the submitted foreign language documents.

Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between August 15, 2001 and August 15, 2003. The evidence of record does not establish that the petitioner and the beneficiary met as required. The time and financial commitments required for travel to a foreign country are requirements common to those filing the Form I-129F petition and do not constitute extreme hardship to the petitioner. Although the petitioner contends that the beneficiary is prevented from meeting him based on religious custom, the record fails to provide evidence in support of this contention. Further, as pointed out by the director in his decision, the petitioner and the beneficiary have previously met one another in person. While it is regrettable that the petitioner experiences a fear of flying in the wake of the September 11 terrorist attacks, the petitioner again fails to provide substantiation of his assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The AAO acknowledges that the beneficiary has previously sought the ability to travel to the United States as evidenced by the application stamps in the submitted Colombian passport bearing her name. The AAO finds, however, that the record fails to establish that the petitioner and the beneficiary exhausted their options for conducting a meeting in compliance with the two-year meeting requirement, including meeting in a third country.

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.