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**U.S. Citizenship  
and Immigration  
Services**

*D6*

FILE:

SRC 04 081 52614

Office: TEXAS SERVICE CENTER

Date: **NOV 30 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 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, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Mexico, 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. *Decision of the Director*, dated September 22, 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 January 27, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on January 27, 2002 and ended on January 27, 2004.

In response to the director's request for evidence and additional information, the petitioner failed to submit sufficient documentation evidencing a meeting between the petitioner and the beneficiary during the two-year period immediately preceding the filing of the Form I-129F petition.

On appeal, the petitioner states that he filed another Form I-129F petition for the beneficiary during 2002 (SRC 03 013 50657). The petitioner indicates that in the instant application he has provided evidence of the beneficiary's divorce from her prior spouse as well as photographs of his vacation with the beneficiary in Acapulco. The petitioner states that he has also submitted money order receipts and a Form I-94 card evidencing his border crossing by car in the direction of Mexico during 2001. The petitioner asserts that he is unable to take trips to Mexico simply to take photographs with the beneficiary because he is employed. *Letter from Joaquín Cano T.*, dated October 15, 2004.

The record fails to demonstrate that the petitioner and the beneficiary met between January 27, 2002 and January 27, 2004 as required under section 214(d) of the Act. The AAO notes that the request for evidence, dated July 1, 2004, sent by the director to the petitioner clearly stated that undated photographs of the petitioner and the beneficiary together could be submitted *with additional evidence* in order to establish compliance with the meeting requirement. While the petitioner provides documentation beyond photographs to evidence a meeting between he and the beneficiary during 2001, the AAO finds that a meeting during 2001 fails to establish compliance with the requirement described in section 214(d) of the Act.

The AAO notes that the original form I-129F petition submitted by the petitioner on behalf of the beneficiary (SRC 03 013 50657) was filed on October 16, 2002 and denied by the director on May 21, 2003. The record fails to indicate that an appeal was timely filed by the petitioner in response to the May 21, 2003 decision of the director.

In the absence of primary evidence of a meeting between January 27, 2002 and January 27, 2004, the record is inconclusive as to whether or not the petitioner and beneficiary met as required. Further, the record does not establish 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.