

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

DL



FILE:

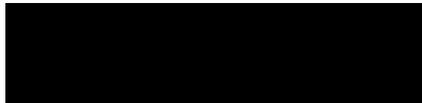
[Redacted]
EAC 04 244 51970

Office: VERMONT SERVICE CENTER

Date: **SEP 06 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 dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Republic of Trinidad and Tobago, 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 petitioner had failed to establish that she and the beneficiary had personally met within the two-year period preceding the date of filing the petition, as required by section 214(d) of the Act. The director also found the petitioner to be ineligible for an exemption of the meeting requirement under 8 C.F.R. § 214.2(k)(2). *Decision of the Director*, dated January 26, 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 August 26, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on August 26, 2002 and ended on August 26, 2004.

At the time of filing, the petitioner indicated that she had previously met the beneficiary, but did not state when that meeting had occurred. In response to the director's request for evidence either that a meeting with the beneficiary had occurred during the specified period or that compliance with the meeting requirement would have constituted an extreme hardship for her or violated the customs of the beneficiary's culture or social practice, the petitioner stated that she had last met the beneficiary in 1999 and had planned to marry him in Trinidad and Tobago in October 2001. The wedding did not occur as a result of the petitioner's fear of air travel following the terrorist attacks of September 11, 2001. She indicated that she continues to be fearful of air travel, whether domestic or international. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act. Neither does it establish that she is eligible for an exemption from that requirement.

On appeal, the petitioner submits a copy of page from the beneficiary's passport showing a December 2, 2002 receipt stamp from the U.S. embassy in Port-of-Spain as proof of his attempt to obtain a nonimmigrant visa to visit her in the United States. She also asserts that the beneficiary submitted other nonimmigrant visa applications to the U.S. embassy in Port-of-Spain, but lost the passport in which these attempts are documented.

However, neither the petitioner's statements regarding her fear of air travel, nor her documentation of the beneficiary's attempt in December 2002 to obtain a U.S. tourist visa establish a basis for exempting her from the meeting requirement of section 214(d) of the Act. The petitioner's fear of air travel in the wake of September 11, 2001 is a common concern for many individuals who wish to file Form I-129F petitions. Therefore, it does not establish that flying to Trinidad and Tobago to meet the beneficiary would have constituted an extreme hardship for her. Further, the beneficiary's single documented attempt to visit the petitioner in the United States is insufficient proof that he was unable to travel outside Trinidad and Tobago to meet the petitioner, including traveling to locations bordering the United States that the beneficiary could have reached without resorting to air travel.

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 her 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). Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Should the petitioner and beneficiary meet, she may file a new Form I-129F petition on the beneficiary's behalf so that a new two-year period in which the parties are required to have met will apply.



Page 4

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.