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FILE:

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WAC 04 149 52923

Office: CALIFORNIA 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, California 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 Philippines, 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 filing of the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated December 8, 2004.

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 April 28, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on April 28, 2002 and ended April 28, 2004.

At the time of filing, the petitioner indicated that she had met the beneficiary in 1998 and had subsequently traveled to The Philippines in 2000 and in March 2002. In response to the director's request for evidence either that a meeting with beneficiary had occurred during the specified two-year period or that such a meeting would have constituted extreme hardship for her or would have violated the customs of the beneficiary's culture or social practice, the petitioner again stated that she had last seen the beneficiary in March 2002 and had not been able to return to The Philippines during 2003 because of her mother's death. She also provided copies of her airline tickets for an October 2004 trip to The Philippines to announce her engagement. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act, i.e., met with the beneficiary between April 28, 2002 and April 28, 2004.

On appeal, the petitioner states that her mother's death in April 2003 prevented her from traveling to The Philippines during the specified two-year period. She states that she and the beneficiary announced their engagement on October 31, 2004 in The Philippines and submits copies of photographs taken at that time, as well as two original photographs of her and the beneficiary, dated March 20, 2002.

While the petitioner may well have faced difficulties in arranging travel to The Philippines as a result of her mother's health, coordinating family obligations with overseas travel is a challenge faced by many individuals who wish to file Form I-129Fs. As a result, these obligations do not constitute extreme hardship and exempt the petitioner from the meeting requirement. Further, 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 beneficiary's home country. The record on appeal does not, however, demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to The Philippines, including the beneficiary traveling to meet the petitioner in the United States. 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). 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 AAO notes the petitioner's travel to The Philippines in October 2004. While this trip does not satisfy the meeting requirement for the instant Form I-129F, the petitioner may file a new Form I-129F on the 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.