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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

WAC 06 025 51579

Office: CALIFORNIA SERVICE CENTER

Date:

DEC 27 2006

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Philippines, 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 record did not establish that the petitioner and beneficiary had personally met within the two-year period immediately preceding the filing of the petition, as required by section 214(d) of the Act. He further determined that the record did not establish a basis on which to exempt the petitioner from this requirement. The director also denied the petition for finding that the petitioner's previous marriage had not been legally terminated at the time of his October 27, 2005 filing of the Form I-129F. *Decision of the Director, dated May 22, 2006.*

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 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 October 27, 2005. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 27, 2003 and ended on October 27, 2005.

At the time of filing, the petitioner indicated that his last meeting with the beneficiary was on July 17, 2003 in Saudi Arabia. He stated that his first contact with the beneficiary was in April 1999 in Saudi Arabia. The petitioner's housekeeper introduced him to the beneficiary through a letter, and they arranged to meet at a shopping mall. The petitioner stated that he and the beneficiary agreed to see each other again, and over the next five years they realized they loved each other very much. The petitioner also submitted photographs showing himself with the beneficiary.

On appeal, the petitioner stated that he and the beneficiary dated for about four months before moving in together in June of 1999. They lived together until July 17, 1999, the time when the petitioner had to return to the United States to be treated for medical reasons. Upon the petitioner's departure, the beneficiary returned to the Philippines to stay until the petitioner could get her a fiancé visa to come to the United States. In his Form I-290B, the petitioner stated that he met the beneficiary in March 1999 and lived with her from May 1999 until July 2003 when he had to return to the United States for medical treatment. The AAO notes the numerous inconsistencies with the dates regarding when the petitioner and beneficiary met, the amount of time the petitioner and beneficiary lived together, and when the petitioner returned to the United States. The petitioner also submitted a letter from the Brunswick County Health Department dated May 30, 2006 stating that the petitioner has a history of multiple coronary artery bypass grafting and is currently under treatment for uncontrolled diabetes, diabetic nephropathy, hypertension, and diabetic foot lesions. His health care practitioner stated that a long journey with different food and possible difficulty in obtaining health care in unfamiliar surroundings would jeopardize his health and survival at this time. Letter, [REDACTED] Brunswick County Health Department. Additionally, the petitioner submitted a divorce certificate dated June 22, 2004.

While the AAO finds the petitioner to have established that he was divorced at the time he filed the Form I-129F, and that he had previously met the beneficiary, he has not, however, established compliance with the meeting requirement of section 214(d) of the Act, as it relates to the instant petition.

The issue becomes whether the petitioner is exempted from the two-year meeting requirement. The petitioner has offered no evidence to establish that compliance with the meeting requirement during the specified period would have violated the customs of the beneficiary's culture or social practice. With respect to extreme hardship, the petitioner submitted a letter from a health care practitioner regarding his medical conditions and inability to travel long distances. While the AAO recognizes this hardship, there is nothing in the record to

preclude the petitioner from traveling a shorter distance. The petitioner stated that the beneficiary could not get a tourist visa to the United States, as he had already submitted the fiancé visa. The AAO notes that the petitioner is not required to meet the beneficiary in the United States or the Philippines. He has presented no evidence that he and the beneficiary have explored meeting in another country, one where the petitioner would not have to travel a long distance. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Once the petitioner and beneficiary have again met, he may file a new I-129F petition on the beneficiary's behalf so that a new two-year meeting period 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.