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

DG

FILE:

[REDACTED]
LIN 04 202 53171

Office: NEBRASKA SERVICE CENTER

Date: JAN 18 2006

IN RE:

Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 Acting Director, Nebraska 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 Vietnam, 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 record did not establish that the petitioner and beneficiary had personally met within the two-year period immediately preceding the date of filing of the petition, as required by section 214(d) of the Act. He further determined that the petitioner had failed to prove that he should be exempted from having to comply with meeting requirement. *Decision of the Acting Director*, dated March 8, 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 July 21, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 21, 2002 and ended on July 21, 2004.

At the time of filing, the petitioner stated he and the beneficiary had not previously met. In response to the director's request for evidence, he indicated that meeting the beneficiary in Vietnam would have involved personal hardship for him, as well as putting a critical strain on his construction company. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

On appeal, the petitioner states that leaving his business for any length of time to meet the beneficiary would create a financial hardship for him. He indicates that he is the sole owner of his company and that he has no one who could fulfill his business commitments were he to visit the beneficiary. He contends that the loss of business that would result from his absence would render him unable to meet his financial obligations. In support of his statements, he submits a letter from the owner of the business that provides 75 percent of his income. This individual states that should the petitioner leave the country for any length of time, he would have to be replaced by another subcontractor. While the AAO acknowledges the petitioner's concerns regarding his business operations and finances, they do not establish his eligibility for an exemption from the meeting requirement under 8 C.F.R. 214.2(k)(2).

The employment and financial obligations cited by the petitioner as preventing his travel are common concerns for many individuals who wish to file Form I-129F petitions. Accordingly, they do constitute extreme hardship. Further, although section 214(d) of the Act requires the petitioner and beneficiary to have met between July 21, 2002 and July 21, 2004, it does not stipulate that the petitioner travel to Vietnam. The petitioner could have satisfied the meeting requirement by having the petitioner meet him in the United States or in a bordering country, limiting or eliminating his time away from work. However, the record on appeal does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Vietnam. Taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find the record to establish 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. 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, he may file another 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.