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U.S. Citizenship
and Immigration
Services

D6



FILE: [REDACTED]
LIN 05 047 54304

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 Syria, 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 petitioner had failed to establish that he 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. He further found that the petitioner did not qualify for an exemption from the meeting requirement. *Decision of the Acting Director*, dated April 20, 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 December 6, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on December 6, 2002 and ended on December 6, 2004.

At the time of filing, the petitioner indicated that he had not previously met the beneficiary, stating that his responsibility for the care of his three children and his employment as database administrator did not allow him to travel. He also noted that the beneficiary's application for a U.S. tourist visa had been denied. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

The AAO notes the petitioner's statements regarding his parental and employment responsibilities. However, they do not provide a basis for finding that compliance with the meeting requirement would have been an extreme hardship for him. Many individuals who plan to travel overseas before filing Form I-129Fs must find ways to meet personal obligations, including those involving family or employment, while they are away. Accordingly, the reasons the petitioner states prevented his travel to meet the beneficiary do not establish that his compliance with the meeting requirement would have been an extreme hardship.

Further, while section 214(d) of the Act stipulates that a petitioner and beneficiary must meet during the two-year period immediately preceding the filing of the Form I-129F, it does not require the petitioner to travel to the beneficiary's home country. Instead, the petitioner and beneficiary could have satisfied the requirements of section 214(d) by meeting at a location that would have minimized the petitioner's travel time, including the United States or a country bordering the United States. While the petitioner indicated that the beneficiary had previously applied for a U.S. tourist visa, there is no proof of that visa refusal in the record. Further, the beneficiary's single attempt to obtain a U.S. visa does not establish that she and the petitioner actively sought to comply with the meeting requirement. The submission of a single nonimmigrant visa petition to a U.S. consulate is insufficient proof of an exhaustive effort on the part of the petitioner and beneficiary to arrange a meeting. Therefore, 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).

On appeal, the petitioner submits proof of a trip to Syria in May 2005. However, while this documentation may establish that the petitioner has now met the beneficiary, it does not satisfy the meeting requirement of 214(d) of the Act, as it relates to the instant petition. Since the petitioner's trip to meet the beneficiary did not take place within the two-year period preceding the petitioner's filing of the Form I-129F – December 6, 2002 to December 6, 2004 – he has not met the requirements of section 214(d). Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Now that the petitioner has met the beneficiary, he may file a new Form I-129F petition on her 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.