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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
LIN 05 061 53115

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.

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

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 Liberia, 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 acting 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 acting 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 Acting Director*, dated May 16, 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 27, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on December 27, 2002 and ended on December 27, 2004.

At the time of filing, the petitioner indicated that she and the beneficiary had met over the Internet two years previously. In response to the director's request for evidence of a face-to-face meeting or proof that such a meeting would have resulted in extreme hardship or would have violated the customs of the beneficiary's culture or social practice, the petitioner provided a March 29, 2005 letter from a medical facility that stated it had provided her health care for the previous six years. The letter, signed by one of the facility's physicians and its physician assistant, states that the petitioner suffers from diabetes, hypertension, edema of the legs and ankles and obesity and is not a candidate for air travel because of her health and size. It indicates that such travel could result in serious health consequences. 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 resubmits the same medical letter, as well as copies of her telephone records to document her ongoing relationship with the beneficiary. She states that had her doctor not prohibited air travel she would have made the trip to Ghana, the country in which the beneficiary is residing, and married him there.

The AAO finds the letter provided by the petitioner's doctor to be sufficient evidence that she is medically unfit to travel to Ghana to meet the beneficiary. However, the petitioner's inability to travel does not, in itself, exempt her from the meeting requirement of section 214(d) of the Act.

While section 214(d) of the Act stipulates that a meeting between the petitioner and the beneficiary must occur 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 country of residence. The petitioner could have satisfied the requirements of section 214(d) by having the beneficiary meet her in the United States during the specified period. The record, however, contains no evidence that indicates the petitioner and beneficiary considered or pursued such an option in an effort to comply with the meeting requirement. Therefore, 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 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). Accordingly, 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.

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.