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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
LIN 06 001 53907

Office: NEBRASKA SERVICE CENTER

Date:

JUN 28 2006

IN RE:

Petitioner:
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, Chief
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 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 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. The acting director also found the petitioner to be ineligible for an exemption from the meeting requirement under 8 C.F.R. § 214.2(k)(2). *Decision of the Acting Director*, dated December 13, 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 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 3, 2005. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on October 3, 2003 and ended on October 3, 2005.

At the time of filing, the petitioner indicated that he had not previously met the beneficiary, stating that he had an advanced form of multiple sclerosis and was unable to travel to The Philippines. In support of his claim, he submitted a letter from a doctor at the medical clinic where he is a patient and copies of 2004-2005 medical evaluations. The doctor's letter confirms the petitioner's medical condition and states that extended air travel would jeopardize his health.

In his denial, the director acknowledged the petitioner's medical condition, but noted that compliance with section 214(d) of the Act did not require the beneficiary to travel to The Philippines. The director found the record to contain no evidence that the petitioner and beneficiary had tried to satisfy the meeting requirement by meeting in a country bordering the United States. Accordingly, he found the petitioner had not demonstrated that a meeting with the beneficiary during the specified period would have posed an extreme hardship for him.

On appeal, the petitioner submits a statement responding to the director's finding that he and the beneficiary had not explored the possibility of meeting in a country bordering the United States, i.e., Canada or Mexico. He contends that he has learned that Filipino nationals face significant hurdles in obtaining nonimmigrant visas to Canada and that meeting a fiancée is grounds for an immediate denial of a Canadian tourist visa. He also states that Filipino nationals applying for tourist visas to Mexico must first qualify for "transit approvals" to land in the United States or proof they hold U.S. tourist visas. The petitioner's statements on appeal do not, however, overcome the basis of the director's denial – the failure of the petitioner and beneficiary to provide evidence that, in light of the petitioner's medical condition, they attempted to comply with section 214(d) of the Act by meeting in a location that would have reduced the risks to the petitioner's health.

The petitioner's statement on appeal indicates that he and the beneficiary, prior to the director's denial, had not considered meeting at an alternate location. He contends, however, that the information he has received about visa issuance in Canada and Mexico proves that the beneficiary would have been unable to obtain a tourist visa to either country during the specified period. The petitioner requests that he be exempted from the meeting requirement based on his medical condition and the beneficiary's inability to obtain a tourist visa from Mexico or Canada. The petitioner's assertions regarding the difficulties in obtaining visitors' visas to Canada or Mexico do not, however, establish a basis for exempting him from the meeting requirement of section 214(d) of the Act.

The petitioner's conjectures about the outcome of potential visa applications made by the beneficiary are not evidence that he and beneficiary, during the specified period, considered or attempted to meet at a location other than The Philippines. Neither do they prove that the beneficiary would have been or is unable to obtain a tourist visa to visit Canada or Mexico, or any other country. The record on appeal offers no evidence that

prior to the director's decision, or subsequent to it, the beneficiary ever applied for a tourist visa to another country and had her application refused. Absent documentation of her attempts to obtain tourist visas to meet the petitioner during the specified period, the record does not establish that she and the petitioner could not have satisfied the meeting requirement by meeting in the United States or at a location near the United States. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the appeal will be dismissed.

The denial of the petition is without prejudice. The petitioner 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. The petition is denied.