

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

DC



FILE: [REDACTED]
EAC 05 184 50463

Office: VERMONT SERVICE CENTER

Date: JUN 29 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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Nigeria, 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 filing of the petition, as required by section 214(d) of the Act. She also found that the petitioner had failed to establish that compliance with the meeting requirement would have constituted an extreme hardship for him. *Decision of the Acting Director*, dated November 22, 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 June 14, 2005. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on June 14, 2003 and ended on June 14, 2005.

At the time of filing, the petitioner indicated that he had previously met the beneficiary, but did not state that a meeting had occurred during the period just noted. In response to the director's request for evidence, the petitioner submitted a range of documents to establish his relationship to the beneficiary, including copies of his family's marriage proposal to the beneficiary's family and their acceptance of the proposal. The petitioner also provided copies of pages from his Nigerian passport documenting his arrival in Nigeria on February 25, 2003 and his departure on March 16, 2003, as well as copies of airline ticket and baggage receipts that support the dates indicated by the passport. He did not, however, submit any evidence to establish that he and the beneficiary had met during the specified period. On appeal, the petitioner confirms that he has not been in Nigeria since March 2003. He contends, however, that travel to Nigeria between June 14, 2003 and June 14, 2005 would have caused him extreme hardship since he believed that overseas travel would jeopardize his application for citizenship.

The AAO notes the petitioner's statements regarding his reluctance to travel prior to his naturalization. However, the petitioner's decision not to travel until he was naturalized was a matter of choice. He was not prevented from traveling outside the United States by having filed for U.S. citizenship. Accordingly, overseas travel during the specified period would not have constituted an extreme hardship for the petitioner, as required for exemption under the regulation at 8 C.F.R. § 214.2(k)(2). Moreover, the AAO notes that section 214(d) of the Act, 8 U.S.C. § 1184(d), does not require that the petitioner travel to the beneficiary's country of residence, only that the petitioner and beneficiary meet during the two-year period immediately preceding the filing of the Form I-129F. Accordingly, the meeting requirement in the instant case could also have been satisfied by the beneficiary traveling to the United States. The record on appeal does not, however, demonstrate that the petitioner and the beneficiary considered or explored options for a meeting beyond the petitioner traveling to Nigeria. For this reason as well, the petitioner has not established that compliance with the meeting requirement would have caused him extreme hardship.

As the record offers no evidence that compliance with the meeting requirement would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the petitioner has also failed to establish a basis for exemption under the second criterion at 8 C.F.R. § 214.2(k)(2).

The record establishes neither that the petitioner has complied with the meeting requirement of section 214(d) of the Act, 8 U.S.C. § 1184(d), nor offers a basis for exempting him from this requirement. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Should the petitioner and beneficiary meet, 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.