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U.S. Citizenship
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FILE:

WAC 07 015 51022

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

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:

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 Director, California 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 Cuba, 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 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 filing of the petition, as required by section 214(d) of the Act. He further determined that the record did not establish a basis on which to exempt the petitioner from this requirement. *Decision of the Director*, dated October 31, 2006.

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 16, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 16, 2004 and ended on October 16, 2006.

At the time of filing, the petitioner indicated that he had met the beneficiary over 12 years ago in Cuba, and that he had most recently met with her in March 2004. *See Form I-129F.*

On appeal, the petitioner submits his child's Cuban birth certificate, listing the petitioner as the father and the beneficiary as the mother; a letter from the petitioner detailing the chronology of his relationship with the beneficiary; photocopies of the petitioner's plane ticket, boarding pass, and visa application for the petitioner's trip to Cuba in March 2004; money transfers from the petitioner to the beneficiary; cell phone bills documenting calls to the beneficiary; emails and text messages from the beneficiary to the petitioner; letters from the beneficiary to the petitioner; a photocopy of the petitioner's Cuban passport, and photographs of the petitioner with the beneficiary from 1987 – 1998, 2001, and 2004. Counsel notes that the petitioner did not comply with the requirement of meeting with the beneficiary within two years of filing the Form I-129F because he was respecting the travel restrictions of the United States, as his most recent visit to Cuba occurred from March 2, 2004 to March 23, 2004.

The petitioner's trips to meet the beneficiary occurred approximately two years and seven months before he filed the Form I-129F on behalf of the beneficiary. Therefore, although he has established that he has met the beneficiary, this meeting did not occur within the two-year time period specified above – October 16, 2004 to October 16, 2006 – and does not satisfy section 214(d) of the Act. The AAO recognizes the petitioner's inability to travel to Cuba within the two-year period immediately preceding the filing of the petition due to U.S. travel restrictions. 31 C.F.R. § 515.561. The AAO notes, however, that the record fails to include documentation in support of the beneficiary's attempts to obtain permission to leave the country for travel and the Cuban government's response to her requests. Section 214(d) of the Act does not require the petitioner to meet his fiancée in Cuba and the record fails to include documentation to support that he and the beneficiary have explored meeting in another country. The AAO does not find that the petitioner has offered evidence to establish that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for him or that such a meeting would have violated the customs of the beneficiary's culture or social practice. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. When the petitioner and beneficiary meet again, he may file a new 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.