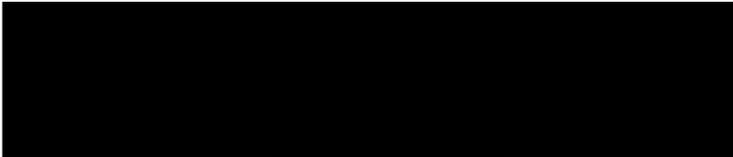


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FILE: [Redacted]
WAC 07 090 51894

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 09 2007**

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:

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 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. She further determined that the record did not establish a basis on which to exempt the petitioner from this requirement. *Decision of the Director*, dated February 21, 2007.

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 February 5, 2007. Therefore, the petitioner and the beneficiary were required to have met during the period that began on February 5, 2005 and ended on February 5, 2007.

At the time of filing, the petitioner indicated that he and the beneficiary were together in 2003 when he went to Cuba to visit their daughter. *See Form I-129F.*

On appeal, the petitioner states he visited Cuba in September 2003, and the law only allows him to visit his family in Cuba once every three years. His passport expired in 2006 and he applied for its renewal in December 2006. The petitioner noted that once his passport has been renewed, he plans to visit Cuba. *Form I-290B.*

According to the petitioner's testimony, his trip to meet the beneficiary occurred approximately three years and five months before he filed the Form I-129F on behalf of the beneficiary. Therefore, although he has met the beneficiary, this meeting did not occur within the two-year time period specified above – February 5, 2005 to February 5, 2007 – and does not satisfy section 214(d) of the Act. The AAO recognizes the petitioner's inability to travel to Cuba within three years of his September 2003 visit due to United States travel restrictions. 31 C.F.R. § 515.561. It notes, however, that the petitioner could have traveled to Cuba after September 2006 and prior to February 5, 2007, thus satisfying the two-year meeting requirement. As a result, the AAO does not find the petitioner's assertion that he was unable to travel due to his expired passport to constitute an extreme hardship.

In that section 214(d) of the Act does not require the petitioner to meet his fiancée in Cuba, the record must also demonstrate that the petitioner and beneficiary explored meeting in a country other than Cuba, including the United States. The petitioner, however, has submitted no evidence that the beneficiary applied for a visa to visit another country or sought exit permission from the Cuban government. Accordingly, the AAO does not find that the petitioner has established that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for him. As he has also failed to submit proof that such a meeting would have violated the customs of the beneficiary's culture or social practice, he is not eligible for an exemption from the meeting requirement under 8 C.F.R. § 214.2(k)(2). 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.