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U.S. Citizenship
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Services

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FILE:

WAC 06 125 53278

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 of the Administrative Appeals Office 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 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 § 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 petitioner had not offered documentation evidencing that he and the beneficiary had personally met within two years before the date of filing the petition, as required by § 214(d) of the Act.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) denied the petitioner his right to due process by failing to inform him that the petition would be denied due to the absence of evidence that the petitioner and beneficiary had met in person. Counsel asserts that the petitioner was not given the opportunity to explain why he and the beneficiary did not meet in person prior to the petition's filing date. On appeal, counsel submits the petitioner's statement, letters from the petitioner's physician and his employer, and telephone records. The AAO has reviewed the entire record and concurs with the director's decision in this matter.

Section 101(a)(15)(K) of 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 § 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 the CIS on March 13, 2006; therefore, he and the beneficiary were required to have met during the period that began on March 13, 2004 and ended on March 13, 2006. The evidence instead shows that the two met in person after the filing date, in October 2006.

The AAO notes that the director's request for evidence, dated September 13, 2006, notified the petitioner that the meeting requirement could be waived if the petitioner submitted evidence that the requirement would cause him to suffer extreme hardship, or would violate the beneficiary's foreign customs. Neither counsel nor the petitioner submitted any evidence in support of a claim of extreme hardship in response to that request. The AAO finds no legal or factual basis for counsel's assertion that the petitioner was not given the opportunity to furnish such explanation or evidence to CIS.

On appeal, counsel contends that the petitioner's serious health problem and his employment instability made it impossible for the petitioner to travel abroad to meet the beneficiary in person. Counsel submits a letter dated November 28, 2006 written by Dr. [REDACTED] who states that the petitioner underwent open heart surgery on September 23, 2005. Dr. [REDACTED] writes that at a follow up appointment on November 1, 2006, he found the petitioner to be doing well. In his statement on appeal, the petitioner indicates that he returned to work on December 5, 2005, and thereafter worked extremely diligently in order to secure a permanent job offer from the company that took over his job duties. The petitioner explains that he could not travel due to these difficulties.

It should be noted that although § 214(d) of the Act requires the petitioner and the beneficiary to meet, it does not require the petitioner to travel to the beneficiary's home country. The record does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to a distant country, such as the beneficiary's traveling to meet the petitioner in the United States or a bordering country. Moreover, the evidence does not show that the petitioner believed his health and employment difficulties to be permanent, such that there would have been no point in waiting to file the petition. Within a few months after his filing date, in fact, he was offered a permanent job and his health was sound enough for the petitioner to travel to China.

Taking into account the totality of the circumstances as counsel has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* § 291 of the Act, 8 U.S.C. § 1361
The petitioner has not met that burden.

ORDER: The appeal is dismissed.