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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

WAC 07 018 53206

Office: CALIFORNIA SERVICE CENTER

OCT 30 2007
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:

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 Brazil, as the fiancé 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 March 20, 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 October 23, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 23, 2004 and ended on October 23, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had met during the specified period just noted, but failed to provide evidence of that meeting(s). In response to the director's request for evidence, the petitioner indicated that he had not met the beneficiary between October 23, 2004 and October 23, 2006 because of financial and employment constraints. He submitted a copy of his Brazilian passport as evidence of a 1994 trip to Brazil. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

On appeal, the petitioner states that he is not able to travel to Brazil because he works seven days a week. He submits an employment contract showing that his company, H & F Maintenance Services, provides cleaning services to Brinker Florida Incorporated, seven days a week, from February 24, 2006 to February 24, 2008. *Work Agreement*, dated February 24, 2006.

The AAO finds that the documentation submitted does not establish that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for the petitioner or that such a meeting would have violated the customs of the beneficiary's culture or social practice. The petitioner's work agreement did not begin until February 24, 2006, more than one year after the two-year period began. Moreover, the need to coordinate overseas travel with employment obligations, is faced by many individuals who wish to file Form I-129Fs. Accordingly, such obligations do not constitute extreme hardship under the regulation at 8 C.F.R. §214.2(k)(2).

The AAO also notes that while section 214(d) of the Act requires the petitioner and beneficiary to meet during the specified period, it does not require the petitioner to travel to the beneficiary's home country. The record on appeal does not demonstrate that the petitioner and the beneficiary considered or explored options for meeting at a location outside Brazil, including the United States that would have minimized or eliminated the petitioner's time away from work.

The denial of the petition is without prejudice. Once the petitioner and beneficiary meet, 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. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.