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

PUBLIC COPY

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FILE:

EAC 06 107 51111

Office: VERMONT SERVICE CENTER

Date: SEP 07 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, 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 Haiti, 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. *Decision of the Director*, dated August 1, 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 March 2, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 2, 2004 and ended on March 2, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had dated for seven years and have a child together, but that he had not met with the beneficiary during the two-year period immediately preceding the filing of the Form I-129F.

On appeal, the petitioner states that in May 2006 he made a trip to Haiti and met with his fiancée. *Form I-290B and attached statement.* The record also includes a copy of the petitioner's passport showing Haitian entry and exit stamps for May 18, 2006 and May 25, 2006 respectively. *See copy of passport.*

While the AAO finds the petitioner to have established that he traveled to Haiti in May 2006 and that he met with the beneficiary during that time, he has not established compliance with the meeting requirement of section 214(d) of the Act, as it relates to the instant petition. The petitioner's trip to meet the beneficiary occurred approximately two months after he filed the Form I-129F on behalf of the beneficiary, not within the two-year time period specified above. On appeal, the petitioner contends that his pre-med studies and financial obligations to the beneficiary and their daughter prevented him from traveling to Haiti during the specified period. He submits copies of money transfers to the beneficiary and correspondence with the beneficiary and his daughter to establish his continuing relationship with them.

The challenges of coordinating overseas travel with personal obligations, such as employment and education, are faced by many individuals who wish to file Form I-129Fs. Accordingly, neither the petitioner's academic studies nor his employment obligations provide a basis for a finding of extreme hardship under the regulation at 8 C.F.R. § 214.2(k)(2). Moreover, although section 214(d) of the Act requires that the petitioner and beneficiary meet during the two-year period immediately preceding the filing of the Form I-129F, it does not require the petitioner to travel to the beneficiary's country of residence. The record, however, offers no evidence that the petitioner and beneficiary explored the possibility of the beneficiary traveling to the United States or to a country near the United States to meet the petitioner, thus eliminating or minimizing the impact of a meeting on the petitioner's existing obligations.

The petitioner has offered insufficient evidence to establish that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for him and no evidence to prove that such a meeting would have violated the customs of the beneficiary's culture or social practice. Therefore, he

has failed to establish that he is eligible for an exemption from the meeting requirement of section 214(d) of the Act and the appeal will be dismissed.

The denial of the petition is without prejudice. As the petitioner and beneficiary have met, he may file a new Form 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.