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U.S. Citizenship  
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Services

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SEP 18 2007

FILE:

WAC 06 260 52115

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 sustained.

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 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 2, 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 August 21, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 21, 2004 and ended on August 21, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had never met. 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 unable to travel to the Philippines due to his poor health. *Form I-290B*. The petitioner has had two kidney transplants, is currently taking several drugs, and requires frequent laboratory analysis and adjustment of medication. *Form I-290B; Attorney's brief; medical records*. His doctor has advised him not to travel to the Philippines or under-developed countries given the complexity of his medical problems and that it would be impossible to monitor the side effects of his medications. *Letters from [REDACTED] M.D., Renal Division, Emory University School of Medicine, dated June 14, 2006 and December 19, 2006*. While the AAO notes that the petitioner is not required to meet his fiancée in the Philippines or in an under-developed country, it acknowledges the seriousness of the petitioner's medical condition as documented by numerous medical records showing regular follow-up care since his kidney transplant. *See medical records*. As such, the AAO finds that the petitioner would not be able to travel outside of the United States due to his medical condition.

Counsel asserts that the beneficiary would not qualify for a visitor's visa as she is an intending immigrant because she has a fiancée who is a U.S. citizen whom she intends to marry. *Attorney's brief*. The AAO notes that the beneficiary became an intending immigrant on August 21, 2006, the date the petitioner filed the Form I-129F on her behalf. The record does not demonstrate that the beneficiary was an intending immigrant prior to the filing of the Form I-129F, specifically during the two-year period immediately preceding the application. As such, the issue becomes whether the beneficiary could have visited the petitioner in the United States from August 21, 2004 to August 21, 2006. While the record does not demonstrate that the beneficiary attempted to obtain a visitor visa to the United States during that time, the beneficiary stated that her entire family is poor and she could not afford a plane ticket or the visa application fees to apply for a visa to the United States. *Statement from the beneficiary, dated March 31, 2007*. She further stated that she does not have a bank account, own any money, property or assets. *Id.* The record includes the United States Department of State requirements for qualifying for a visitor's visa to the United States. The Department of State notes that applicants for visitor visas must demonstrate evidence of funds to cover expenses in the United States and evidence of compelling social and economic ties abroad. [http://travel.state.gov/visa/temp/types/types\\_1262.html?css=print](http://travel.state.gov/visa/temp/types/types_1262.html?css=print). Counsel asserts that the beneficiary is

young and poor and therefore has no economic funds or ties to ensure her return to the Philippines, nor does she have the funds to pay for the plane trip or cover her expenses in the United States. *Attorney's brief.* The AAO notes that while the beneficiary has previously been employed, she has not worked since June 2004 and therefore was not working during the two-year period immediately preceding the filing of the Form I-129F. *Form G-325A, Biographic Information sheet for the beneficiary.* According to the beneficiary, she is currently a student on a full-scholarship. *Statement from the beneficiary,* dated March 31, 2007. Given her unemployment status from June 2004 to the present time and her lack of finances, assets, and economic ties to the Philippines, the AAO finds that the record demonstrates that the beneficiary would not have been able to comply with Department of State's requirements for obtaining a visitor's visa.

When looking at the aforementioned factors, specifically the significant health condition of the petitioner and the financial state of the beneficiary, the AAO finds 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. Therefore, the appeal will be sustained.

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 met that burden.

**ORDER:** The appeal is sustained.