

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

DL

[REDACTED]

FILE: [REDACTED] WAC 07 241 52293

Office: CALIFORNIA SERVICE CENTER

Date: JUL 28 2008

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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 naturalized 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 petitioner had failed to establish that he and the beneficiary had personally met within the two-year period preceding the filing of the petition, as required by section 214(d) of the Act, or that he was eligible for an exemption from the meeting requirement under the regulation at 8 C.F.R. § 214.2(k)(2). *Decision of the Director*, dated January 16, 2008.

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 July 30, 2007. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on July 30, 2005 and ended on July 30, 2007.

At the time of filing, the petitioner indicated that he had previously met the beneficiary in July 2002, but that no meeting had occurred within the specified period because he was on parole and the beneficiary was unable to obtain a visa to the United States. On appeal, counsel for the applicant resubmits a letter from the petitioner's parole officer, which states that the terms of the applicant's parole prevent him from leaving the United States. Counsel also provides a letter from the Deputy Chief of the Nonimmigrant Visa Unit at the U.S. embassy in Manila that states the beneficiary was refused a nonimmigrant visa on October 17, 2006. *See Letter from Maria Wesberry, Department of Corrections & Rehabilitation, State of California, dated February 9, 2007; see also Letter from Michelle A. Solinsky, Deputy Chief, Nonimmigrant Visa Unit, U.S. Embassy, Manila, Philippines, dated November 3, 2006.*

The AAO finds the evidence provided by counsel to establish that the petitioner was unable to leave the United States during the two year period preceding the filing of the Form I-290B and that the beneficiary was unable to travel to meet him in the United States. The petitioner has, therefore, established that compliance with the meeting requirement of section 214(d) of the Act would have constituted an extreme hardship for him and is eligible for an exemption from the requirement under 8 C.F.R. § 214.2(k)(2). Accordingly, 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.