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

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2005
WAC 03 081 54380

IN RE: Petitioner: [redacted]
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 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, Director
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 Mexico, 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 petitioner had not offered documentation evidencing that she and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated July 14, 2003.

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 section 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 Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] on January 14, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on January 14, 2001 and ended on January 14, 2003.

In response to the director's request for evidence and additional information, the petitioner submitted a letter stating that she met the beneficiary on June 22, 1999 while the beneficiary was residing in the United States. The letter further indicated that the beneficiary returned to Mexico on November 16, 2000.

On appeal, the petitioner submits a letter, dated July 29, 2003. The petitioner states that she traveled to see the beneficiary in Mexico during the required two-year period. The petitioner provides a receipt from the Hotel San Carlos in Nogales, Sonora, Mexico, dated November 29, 2002, to support this claim. The petitioner also submits a copy of a receipt for cash payment to the beneficiary for yard work; photographs of the petitioner and the beneficiary together; correspondence between the petitioner and the beneficiary with English translations; telephone bills; pre-marital blood examination paperwork and a bus ticket for travel within Mexico.

The AAO finds that the evidence on appeal establishes compliance with the meeting requirement under section 214(d) of the Act. Therefore, the appeal will be sustained.

The AAO notes that, according to the petitioner, the beneficiary resided in the United States for an unsubstantiated period of time. *See Letter from Georgina G. Leon*, dated November 30, 2002 ("Octavio has no passport or airline tickets to prove his arrival and stay in Tucson (because he came here illegally)."). The record fails to establish that the beneficiary's residence in the United States occurred pursuant to a lawful inspection and admission by an immigration officer. Further, although the petitioner indicates that the beneficiary was employed in the United States, the record does not contain evidence that the beneficiary entered with or subsequently obtained employment authorization from the Immigration and Naturalization Service [now CIS]. *Id.* ("He worked for a period of 1 year and 5 months doing odd jobs."). The AAO notes that these issues have direct bearing on the beneficiary's admissibility to the United States and will be reviewed by a consular officer before a nonimmigrant visa is issued to the beneficiary pursuant to the approval of the Form I-129F petition.

ORDER: The appeal is sustained and the application is approved.