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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 05 2005

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IN RE: Petitioner:
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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Nebraska 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 The Philippines, 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 acting director denied the petition after determining that the petitioner and the beneficiary had not personally met during the two years immediately preceding the date of filing of the petition, as required by section 214(d) of the Act and that the record did not establish the petitioner as qualified for an exemption from this requirement. *Decision of the Acting Director,* dated June 29, 2004.

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 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 Citizenship and Immigration Services on November 10, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 10, 2001 and ended on November 10, 2003.

At the time of filing, the petitioner indicated that she had last met her fiancé in 2001. In response to the director's request for evidence that a meeting with the beneficiary had occurred within the period just specified, the petitioner submitted a statement, photographs and copies of pages from her Philippine passport as evidence of her May-June 2001 trip to The Philippines. Therefore, the record of evidence does not establish that the petitioner met the beneficiary during the two-year period immediately preceding her filing of the Form I-129F.

On appeal, the petitioner's representative, who is also her employer, contends that the petitioner's long-term relationship with the beneficiary and her efforts to bring him to the United States make CIS' denial of the instant petition "neither reasonable, nor just." She asserts that the responsibility and self-reliance shown by the petitioner in her life should exempt her from the meeting requirement of section 214(d) of the Act. However, as already discussed, a petitioner may be exempted from the meeting requirement only if compliance with it would have resulted in extreme hardship to the petitioner or would have violated the customs of the beneficiary's culture or social practice.

The AAO also notes that while section 214(d) of the Act requires a meeting between the petitioner and the beneficiary 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 home country. The record on appeal does not, however, demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to The Philippines, including the beneficiary traveling to meet the petitioner in the United States or a country bordering the United States. Taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find that compliance with the meeting requirement would have resulted in extreme hardship to the petitioner or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that exempt a petitioner from the requirements at 8 C.F.R. § 214.2(k)(2). Therefore, the appeal will be dismissed

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Should the petitioner and the beneficiary meet, the petitioner may file a new I-129F petition on the beneficiary's behalf so that a new two-year period in which the parties are required to have met 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.