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

D6

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: AUG 18 2005

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to § 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, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Kenya, as the fiancée of a United States citizen pursuant to § 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 established that he and the beneficiary had personally met within two years before the date of filing the petition, as required by § 214(d) of the Act. On appeal, the petitioner states that requiring him to travel to Kenya would cause him to experience financial hardship, and his visit with the beneficiary prior to marriage would violate her culture's traditions.

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 § 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 (CIS) on July 16, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 16, 2002 and ended on July 16, 2004.

The petitioner has explained that his future in-laws, who live in the Kisii region of Nyanza province, do not want him to travel to their home to meet his fiancée there, as such a meeting would violate Kisii traditions. His future in-laws would, however, allow the beneficiary to travel to the United States to meet the petitioner, if possible. The petitioner has indicated that his fiancée applied for but was denied a visitor's visa at the U.S. consulate, and she was told she should apply for a fiancée visa.

On appeal, the petitioner states that he has already sent his fiancée money to pay her travel expenses. He does not feel that he can ask her to return the money, and, in any case, her family has agreed to allow her to visit the petitioner in the United States, but not in her own town. The AAO points out that although § 214(d) of the Act requires the petitioner and the beneficiary to meet, it does not require that they meet in any specific location, such as either party's home country. Furthermore, it is noted that the financial commitment required for travel to a foreign country is a common requirement to those filing the Form I-129F petition and does not constitute extreme hardship to the petitioner.

Regarding the beneficiary's cultural traditions, the petitioner has submitted several electronic mail messages sent by the beneficiary in which she explained that young Kisii women are not permitted to invite their fiancés into their homes. The record contains no evidence, however, that Kisii women may not meet their fiancés prior to marriage at some other location; indeed, the beneficiary's parents appear willing to allow her to travel alone to Texas to meet the petitioner. A review of Internet resources regarding Kisii social customs does not reveal any taboo against a meeting between fiancés prior to marriage. The record does not establish that the petitioner could not travel to Kenya and meet with the beneficiary at a location other than her parents' house.

Under § 214(d) of the Act, the petitioner and the beneficiary were required to have met between July 16, 2002 and July 16, 2004. The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available. The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.