



U.S. Citizenship
and Immigration
Services

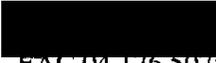
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FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 31 2005**

EAC 04 176 50754

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: SELF-REPRESENTED

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, Vermont 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 the Dominican Republic, 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 acting 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. *Decision of the Acting Director*, dated November 6, 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 May 22, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 22, 2002 and ended on May 22, 2004.

At the time of filing, the petitioner stated he and the beneficiary had previously met, but did not indicate whether that meeting had occurred within the two-year period just noted.

In response to the director's request for evidence, the petitioner indicated that he had met the beneficiary in New York in 1991, and had visited her in the Dominican Republic in 1999, 2000 and 2001. He stated his most recent visit had lasted from May to September 2001 and that he had been unable to visit her since then for financial reasons. Based on the petitioner's response, the director issued a notice of his intent to deny the petition. The petitioner again submitted more documentation, this time establishing that he had traveled to the Dominican Republic in October 2004.

Although the petitioner has indicated that he met the beneficiary in 1991 and has visited her on four other occasions, none of these visits occurred within the two-year period preceding the date of filing, i.e., from May 24, 2002 to May 22, 2004. Therefore, the evidence of record does not establish that the petitioner has complied with the two-year meeting requirement of section 214(d) of the Act.

On appeal, the petitioner states that he misunderstood the meeting requirement, that he had assumed he had only to visit the beneficiary to comply with it. He again asserts that he was unable to visit the beneficiary during the period May 22, 2002 to May 22, 2004 because of financial difficulties. However, the petitioner's financial concerns do not exempt him from the meeting requirement. Such concerns are common among individuals who wish to file Form I-129Fs and, therefore, do not constitute extreme hardship.

Therefore, 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 him or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the bases on which CIS may exempt a petitioner from the meeting requirement of section 214(d) of the Act. 8 C.F.R. § 214.2(k)(2). Accordingly, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. As the petitioner and beneficiary met again in October 2004, he may file a new I-129F petition on the beneficiary's behalf so that a new two-year meeting period 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.