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

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 256 54617

JAN 27 2005

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]

PUBLIC COPY

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.

Ellen L. Johnson

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 dismissed.

The petitioner is a 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 not offered documentation evidencing that he 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, and that the petitioner had not established that compliance with the meeting requirement would result in extreme hardship to the petitioner. *Decision of the Director*, dated April 29, 2004.

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 Citizenship and Immigration Services on September 12, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on September 12, 2001 and ended on September 12, 2003.

In response to the director's request for evidence and additional information, the petitioner submitted an updated report on the petitioner's health status and documentation evidencing the termination of the petitioner's prior marriage. The director determined that the petitioner had not established sufficient grounds for waiver of the meeting requirement under 8 C.F.R. § 214.2(k)(2).

On appeal, counsel contends that the decision of the director is an abuse of discretion and that the meeting requirement should be waived. *Form I-290B*, dated May 25, 2004. Counsel asserts that the petitioner would suffer extreme hardship if he were required to leave the country to meet the beneficiary as his physical condition makes travel impossible. Further, counsel indicates that it is legally impossible for the beneficiary to travel to meet the petitioner. *Motion to Reconsider/Reopen/Brief in Support of Appeal*, dated May 28, 2004.

The record reflects that the petitioner is not only unable to travel to the beneficiary's home country, he is unable to travel outside of the United States and is confined to the area in and around his home owing to quadriplegia and related ailments. *Letter from Robert O. Flores, MD*, dated March 31, 2004 ("Travel outside of his community would constitute an extreme hardship to the petitioner.").

Counsel contends that, despite the suggestion of the director that the beneficiary travel to the United States to meet the petitioner, it is legally impossible for the beneficiary to travel to the United States. *Motion to Reconsider/Reopen/Brief in Support of Appeal.* Counsel asserts that the beneficiary is ineligible for a visitor visa as she intends to enter the United States for the purpose of meeting and marrying the petitioner and residing in the United States. *Id.* The AAO interprets the decision of the director to state that the parties failed to explore the possibility of the beneficiary traveling to the United States as a visitor to meet the petitioner. The AAO does not find that the decision of the director implies that the beneficiary should seek a visitor visa with plans to remain in the United States in violation of that status, as indicated by counsel. The decision of the director suggests that the beneficiary seek a visitor visa in order to fulfill the meeting requirement under section 214(d) of the Act in light of the fact that the petitioner is unable to travel to meet the beneficiary. The decision of the director does not advocate illegal behavior; it identifies an option for compliance with the meeting requirement unexplored by the petitioner and the beneficiary based on the record.

The inability of the petitioner to travel standing alone does not warrant a finding of extreme hardship to the petitioner. The record fails to evidence any attempt by the beneficiary to obtain a visa other than a fiancée visa pursuant to the current petition. 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.