



U.S. Citizenship
and Immigration
Services

DW

FILE:

[REDACTED]
SRC 04 057 51086

Office: TEXAS SERVICE CENTER

Date:

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]

[REDACTED]

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

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 Cambodia, 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 and the beneficiary had not 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 14, 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 December 19, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 19, 2001 and ended on December 19, 2003.

In response to the director's request for evidence and additional information, the petitioner submitted a letter indicating that the beneficiary is unable to obtain a visa for travel to the United States and the petitioner fears flying and absence from work. *Letter from Eugene Dungan*, dated March 21, 2004.

On appeal, counsel states that the beneficiary has applied for a visa and has been denied the ability to travel to the United States. Counsel asserts that the petitioner has never flown owing to an anxiety disorder and travel to Cambodia by car and boat would impose "astronomical" stress and costs on the petitioner. *Statement of Facts*, dated May 12, 2004. Counsel submits a letter from a physician indicating that the petitioner cannot fly due to health reasons and anxiety. *Letter from Mark D. Sander, MD*, dated May 11, 2004. Counsel also provides a copy of *In Re _____*, 11 Immig. Rptr. B2-13 (Dec. 31, 1992) and a tabulation of the mileage between Seattle, Washington and Ho Chi Minh City, Vietnam, printed from www.indo.com on May 12, 2004.

The AAO notes that although section 214(d) of the Act requires the petitioner and the beneficiary to meet, it does not require the petitioner to travel to the beneficiary's home country. The record on appeal does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Cambodia, including, but not limited to the beneficiary traveling to meet the petitioner in the United States or a bordering country. Counsel indicates that the beneficiary is unable to obtain a visa for travel to the United States. *Statement of Facts*. The AAO notes that 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 inability of the petitioner to travel to the home country of the beneficiary standing alone does not warrant a finding of extreme hardship to the petitioner. The provided physician letter indicates that the petitioner is unable to fly; it does not establish that the petitioner is unable to travel within the United States or to a bordering country in order to meet the beneficiary.

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.