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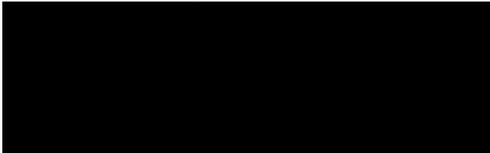
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [Redacted]
EAC 05 010 52797

Office: VERMONT SERVICE CENTER

Date: NOV 18 2005

IN RE: Petitioner: [Redacted]
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: 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 Director, Vermont 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 Nigeria, 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 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 date of filing of the petition, as required by section 214(d) of the Act. He further determined that the petitioner had failed to prove that her compliance with that requirement would have constituted an extreme hardship for her. *Decision of the Director*, dated January 19, 2005.

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 October 14, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 14, 2002 and ended on October 14, 2004.

At the time of filing, the petitioner indicated that she and the beneficiary had last met in 2000. 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.

In response to the director's request for evidence, the petitioner confirmed that she had last seen the beneficiary in 2000 but asserted that she had been unable to comply with the meeting requirement of section 214(d) of the Act as she was out of work between February 2002 and October 2003. She contended that travel during this time would have resulted in extreme financial hardship and would have prevented her from seeking employment. She provided evidence of unemployment benefits paid to her during 2002 and a letter from her current employer, a certified public accounting firm, indicating that she began work for them on October 31, 2003. However, the petitioner's financial situation and unemployment in 2002 and 2003 do not exempt her from the meeting requirement, nor do they explain why she and the beneficiary did not meet during the months of 2003-2004. The cost of overseas travel and the search for employment are challenges faced by many individuals who wish to file Form I-129Fs. Accordingly, they do not constitute extreme hardship.

Further, while section 214(d) of the Act requires the petitioner and the beneficiary to meet during the two-year period immediately preceding the filing of the Form I-129F, it does not require that this meeting occur in 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 Nigeria, including the beneficiary traveling to meet the petitioner in the United States or at a location bordering the United States.

On appeal, the petitioner states that she traveled to Nigeria to meet the beneficiary in November 2004, immediately following her first year of employment with her new employer and submits evidence of her travel. However, the petitioner's November 2004 trip to Nigeria occurred subsequent to her filing of the Form I-129F on behalf of the beneficiary. Therefore, although she has established she met the beneficiary in November 2004, this meeting did not occur within the two-year time period specified above – October 14, 2002 to October 14, 2004 – and does not satisfy the meeting requirement of section 214(d) of the Act. 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 have met, she 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.