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

U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 04 2005
LIN 05 134 52307

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: 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, Nebraska 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 China, 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 petitioner and the beneficiary had not 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. *Decision of the Acting Director,* dated July 18, 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 (CIS) on March 31, 2005. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 31, 2003 and ended on March 31, 2005.

At the time of filing, the petitioner indicated he had not previously met the beneficiary and submitted a written statement, dated March 25, 2005, asking that he be exempted from the meeting requirement of 214(d) of the Act as it would have imposed a significant financial hardship on him. He stated that if such an exemption were not granted, he would file a new Form I-129F upon returning from an April 2005 trip to China.

On appeal, the petitioner asks that CIS reopen his case, as the basis for denial – his failure to comply with the meeting requirement – is no longer valid in light of his April 2005 trip to China. He submits documentation to establish both his travel and his meeting with the beneficiary. This evidence does not, however, overcome the basis for the denial of the instant petition.

Although the petitioner has provided proof of his presence in China in May 2005, his travel there does not fall within the specified meeting period of March 31, 2002 to March 31, 2005. Accordingly, it does not satisfy the meeting requirement of section 214(d) of the Act, which stipulates that a meeting between a petitioner and beneficiary occur during the two-year period preceding the filing of the Form I-129F. Further, it undermines the petitioner's contention that, at the time of filing, he was unable to comply with the meeting requirement because of time and financial constraints.

In seeking an exemption from the meeting requirement, the petitioner stated that traveling to meet the beneficiary during the specified period would have constituted a financial hardship for him. He indicated that his limited financial resources and the responsibilities imposed on him by his employment as a mover and as a partner in a small publishing company were the reasons that he and the beneficiary had not yet met. However, the financial and time commitments cited by the petitioner are common concerns for those who wish to file Form I-129F petitions and do not constitute extreme hardship. Further, the petitioner was not required to travel to China. Although section 214(d) of the Act requires the petitioner and beneficiary to meet, it does not require the petitioner to travel to the beneficiary's home country. Instead, the petitioner and beneficiary could have explored options for meeting at location that would not have required the same cost and time commitments from the petitioner, including, but not limited to the beneficiary traveling to meet the petitioner in the United States. The record, however, shows no indication that the petitioner looked beyond traveling to China.

Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between March 31, 2003 and March 31, 2005. The evidence of record does not establish that the petitioner and the beneficiary met as required. Nor, taking into account the totality of the circumstances, as presented by the petitioner, does the record establish that compliance with the meeting requirement would have resulted in extreme hardship to the petitioner

or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that exempt a petitioner from the meeting requirement of section 214(d) of the Act. Therefore, the appeal will be dismissed.

In reaching its decision, the AAO has taken note of the petitioner's written statement of August 30, 2005 submitted to the AAO subsequent to his appeal. In that statement, the petitioner asserts that his filing of the instant petition prior to meeting the beneficiary was based on incorrect information provided by CIS personnel and contends that the denial should be overturned as a result. He states that he was led to believe that a meeting with the beneficiary, as long as it occurred prior to the adjudication of the Form I-129F, would satisfy the meeting requirement of section 214(d) of the Act. However, the petitioner's assertions do not provide a basis on which to approve the Form I-129F.

As discussed above, the language of section 214(d) of the Act requires a petitioner and beneficiary to have met in person within the two-year period immediately preceding the date on which the petitioner files the Form I-129F. While the petitioner finds the meeting requirement to be antiquated in light of the advances made in worldwide communications, it is, nevertheless, a statutory requirement for the approval of the Form I-129F. CIS must, as a matter of law, impose it on those individuals who file Form I-129Fs, including the petitioner. Exemptions are available only when a face-to-face meeting between the petitioner and beneficiary would either constitute extreme hardship for the petitioner or would violate the customs of the petitioner's or beneficiary's culture or social practice. 8 C.F.R. § 214.2(k)(2). These circumstances are not present in the instant case. As the petitioner did not meet the beneficiary during the specified period, the Form I-129F he filed cannot be approved, regardless of the reasons that, he alleges, led him to submit the petition prior to meeting the beneficiary.

The AAO, however, finds the petitioner's August 30, 2005 statement regarding the basis for his early filing of the Form I-129 to be contradicted by the evidence of record. That the petitioner understood the meeting requirement imposed by section 214(d) of the Act and the circumstances under which he could be exempted from that requirement is clear from his March 25, 2005 statement, submitted at the time of filing. In his statement, the petitioner specifically noted "a traditional requirement for **filing** a I-129F petition is that the couple have met in person within the last two years [emphasis added]. That, unfortunately, is not yet the case of myself and [redacted] As per the written instructions [for], below is our statement on why we believe that requirement should be waived in our case." He also stated that, if the instant petition were denied, he would refile upon his return from China, after he had met the beneficiary.

The petitioner's filing statement indicated that he had read and understood, and was following the instructions provided with the Form I-129F, which, in pertinent part, state:

> **1. Who May File?**
>
> **A.** You are a U.S. citizen, and
> **B.** You and your fiancé(e) intend to marry with 90 days of your fiancé(e) entering the United States, and are both free to marry, and **have met in person within two years before your filing of this petition** [emphasis added] unless:

1) The requirement to meet your fiancé(e) in person would violate strict and long-established customs of your or your fiancé(e)'s foreign culture or social practice; or
2) It is established that the requirement to personally meet your fiancé(e) would result in extreme hardship to you.

Accordingly, the AAO concludes that the petitioner's August 30, 2005 statement does not accurately characterize either the circumstances under which he filed the Form I-129F or his level of understanding of the statutory and regulatory requirements related to the Form I-129F.

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, he may, as he indicated at the time of filing, submit a new Form I-129F petition on the beneficiary's behalf so that a new two-year period in which the parties are required to have met 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.