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

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APR 23 2007

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 06 154 50828

IN RE: Petitioner: [redacted]
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, Chief
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 naturalized 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 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. He further determined that the record did not establish a basis on which to exempt the petitioner from this requirement. *Decision of the Director*, dated September 25, 2006.

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 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 April 18, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on April 18, 2004 and ended on April 18, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had met in the Philippines in October 2002. The record includes a photocopy of the petitioner's passport showing Philippine exit stamps dated December 23, 2000 and November 15, 2002, and photographs of the petitioner with the beneficiary. *See passport of the petitioner and photographs.*

On appeal, the petitioner submitted a letter stating that he did not meet with his fiancée within the two years of filing the Form I-129F because he was unable to take a leave of absence from work without jeopardizing his job. *Statement from the petitioner*, dated October 16, 2006. Upon learning of the denial of the Form I-129F petition, his employer granted a leave of absence from work and the petitioner visited the beneficiary in October 2006. *Id.* The record includes photocopies of the petitioner's passport showing Philippine entry and exit stamps dated October 6, 2006 and October 16, 2006. *See passport of the petitioner.* The record also includes a copy of the petitioner's travel itinerary. *See travel itinerary.* While the AAO finds the petitioner to have established that he traveled to the Philippines in December 2000, November 2002, and October 2006, he has not, however, established compliance with the meeting requirement of section 214(d) of the Act, as it relates to the instant petition.

The petitioner's trips to meet the beneficiary occurred several years before and six months after he filed the Form I-129F on behalf of the beneficiary. Therefore, although he has established that he has met the beneficiary, this meeting did not occur within the two-year time period specified above – April 18, 2004 to April 18, 2006 – and does not satisfy section 214(d) of the Act. The AAO does not find that the petitioner's inability to take a leave of absence from work constitutes an extreme hardship or that such a meeting would have violated the customs of the beneficiary's culture or social practice. The petitioner did not provide any additional reasons as to why he failed to meet the beneficiary during the specified time period. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Since the petitioner and the beneficiary have met again, 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.