U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 24 2007
WAC 06 172 51151

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

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 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 § 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 established that he and the beneficiary had personally met during the two-year period preceding the filing of the petition, as required by § 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 or would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

On appeal, the petitioner explains that he met the beneficiary during two visits to the Philippines in 2003, but he was unable to comply with the two-year meeting provision, because during the two years immediately preceeding the date of the petition, his mother was in ill health. The petitioner asserts that he would have experienced extreme hardship if required to travel to the Philippines to see the beneficiary during that time period, because his presence was critical to his mother's care. The petitioner submits letters written by the chaplain and social worker of his mother's hospice, the petitioner's mother's physician, the owner of his mother's assisted living home, and [redacted] All of the letters express support of the applicant's mother's need for the petitioner's regular care and proximity. The AAO has reviewed the entire record and concurs with the director's decision.

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 § 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 May 23, 2006; therefore, the petitioner and the beneficiary were required to have met during the period that began on May 23, 2004 and ended on May 23, 2006. Instead, they met personally in 2003, over two years prior to the filing date. Thus, the evidence of record does not establish that the petitioner and the beneficiary met as required by § 214(d) of the Act. The AAO acknowledges the petitioner's reluctance to travel very far or remain away from his mother for an extended period. However, it is noted that the regulations do not require the meeting to take place in the beneficiary's home country. The petitioner has not provided any evidence that he and the beneficiary explored the possibility of meeting in the United States or a location closer to the petitioner's residence, including, for example, a third country such as Mexico. In sum, the evidence is insufficient to establish that compliance with the meeting requirement would have resulted in extreme hardship to the petitioner. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Should the petitioner and beneficiary meet again, he may file a new Form I-129F petition on the beneficiary's behalf so that a new two-year period during which the parties are required to have met will apply. The burden of proof in these proceedings rests solely with the petitioner. *See* §291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.