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

U.S. Citizenship and Immigration Services

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JAN 31 2007

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 06 157 50561

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, 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 Cuba, 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 October 2, 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 2003. In response to the Director's request for evidence, the petitioner submitted copies of his Cuban passport, the beneficiary's and her son's Cuban passports, and an airline receipt from [redacted]. showing the petitioner purchased a ticket to travel to Cuba on August 20, 2003.

On appeal, the petitioner states that he met with the beneficiary in Havana, Cuba in August 2003. *Form I-290B.* In support of his claim, he submitted his boarding pass showing a Cuban airport departure tax paid in September 2003, affidavits from a friend and a relative of the beneficiary confirming his 2003 travel to Cuba, and undated photographs of the petitioner with the beneficiary in Cuba. While the AAO finds the petitioner to have established that he traveled to Cuba in August - September 2003, 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 August - September 2003 trip to meet the beneficiary occurred over three years before 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. Further, the petitioner has offered no evidence to establish that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for him or that such a meeting would have violated the customs of the beneficiary's culture or social practice. An affidavit in the record notes that due to U.S. restrictions placed on travel to Cuba, the petitioner is only allowed to travel to Cuba once every three years, and was therefore unable to return to Cuba until September 24, 2006. *Affidavit from* [redacted] *dated October 11, 2006.* A Miami to Havana boarding pass dated September 24 appears to support the affidavit's claim. As neither of the petitioner's trips to Cuba fall within the designated 2-year window, the appeal will be dismissed.

The denial of the petition is without prejudice. As the record indicates that the petitioner and beneficiary have met in 2006, 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.