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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 06 096 51790

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:

[redacted]

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 citizen of the United States who seeks to classify the beneficiary, a native and citizen of Iran, 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 August 15, 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 February 3, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on February 3, 2004 and ended on February 3, 2006.

At the time of filing, the petitioner indicated that he and the beneficiary had previously met in 2002 in Iran. The petitioner stated that the main obstacle that prevented him from meeting with the beneficiary again was his financial situation and that he did not have enough money to pay for a trip to India, the country where the beneficiary resides. Accordingly, the record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act. The AAO notes that in response to the Director's request for evidence, counsel lists financial hardship and parental disapproval of the match, but no prohibition against meeting.

On appeal, counsel again states that the petitioner would suffer extreme hardship by meeting the beneficiary, as his income for the past four years has averaged less than $4000 and the costs associated with a trip to India would exceed $2000. Tax statements were submitted on behalf of the petitioner. Counsel also states that the petitioner cannot meet the beneficiary in person, as it would violate strict and long established customs of the beneficiary's foreign culture or social practice. Counsel asserts that the Imam Islamic Foundation holds the opinion that "... any adult Muslim boy or girl are not allowed to meet his/her partner before marriage. However, for finalizing the decision of marriage, it is permissible for both to see each other in the presence of their families." *See attorney's letter citing the Director's decision, dated August 15, 2006.* Counsel states that both the families of the petitioner and the beneficiary are against their marriage. The evidence of record does not however establish the petitioner's eligibility for an exemption from the meeting requirement of section 214(d) of the Act.

The AAO does not find the petitioner's lack of financial resources to rise to the level of extreme hardship. The financial constraints that the petitioner and counsel indicate prevented him from traveling to meet the beneficiary are faced by many persons who wish to file Form I-129Fs. Accordingly, they do not establish the petitioner's eligibility for a waiver under the regulation at 8 C.F.R. § 214.2(k)(2).

Counsel's claim on appeal that the petitioner and beneficiary were prevented from meeting because of the strict and long-established custom of the beneficiary's foreign culture or social practice is not persuasive. In his response to the director's request for evidence, counsel stated that the parents of both the petitioner and beneficiary initially objected to their relationship based on their youth and forbade them to meet again. On appeal, counsel quotes language from the director's decision indicating that Muslim couples may not meet prior to marriage, except to finalize their decision to marry in the presence of their families. He suggests that such a meeting did not occur because the petitioner's and beneficiary's parents were opposed to their relationship and acted to keep them apart. However, counsel has offered no evidence to support his claim that Muslim religious custom or practice motivated the parents of the engaged couple in their efforts to prevent their meeting, e.g., affidavits from the parents of the petitioner and beneficiary or a statement from an imam familiar with the

petitioner's or beneficiary's situation. Without supporting documentary evidence, the assertions of counsel will not meet the petitioner's burden of proof of this proceeding. The assertions of counsel do not constitute evidence. See *Matter of Soffici*, 22 I. & N. Dec. 158 (BIA 1998). Moreover, counsel's response to the director's request for evidence contradicts this interpretation as he indicated at that time that both sets of parents objected to the seriousness of the relationship between the petitioner and beneficiary based on their tender ages.

The AAO also observes that the petitioner claims to have previously met the beneficiary and that on his form I-129F, he stated that the main obstacle to again meeting the beneficiary was his financial situation, not any cultural or social practice. The AAO does not find that the petitioner has offered evidence to establish that compliance with the meeting requirement during the specified period would have violated the customs of the beneficiary's culture or social practice, as provided at 8 C.F.R. § 214.2(k)(2). Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Should the petitioner and beneficiary meet, 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.