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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 31 2007
WAC 06 181 53630

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 fiancé 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 May 11, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 11, 2004 and ended on May 11, 2006.

At the time of filing, the petitioner indicated that she and the beneficiary had met in February 1985. They dated for many years, and on February 6, 1994 the petitioner gave birth to the beneficiary's child. The petitioner and her child visited the beneficiary in the Philippines in February 2002. The petitioner submitted copies of her passport with entry and exit stamps from the Philippines to confirm this. The petitioner stated she had two major surgeries in December 2003 and March 2005 which prohibited her from visiting the beneficiary.

On appeal, the petitioner states that she met with the beneficiary again in August 2006 in the Philippines. In support of this statement, she submitted copies of her passport with exit and entry stamps from the Philippines along with her airline ticket receipts. While the AAO finds the petitioner to have established that she traveled to the Philippines in February 2002 and again in August 2006, she 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 three months after she filed the Form I-129F on behalf of the beneficiary. Therefore, although she has established that she has met the beneficiary, this meeting did not occur within the two-year time period specified above – May 11, 2004 to May 11, 2006 – and does not satisfy section 214(d) of the Act. Further, the petitioner has offered insufficient evidence to establish that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for her or that such a meeting would have violated the customs of the beneficiary's culture or social practice. Although the petitioner claims to have been prevented from meeting the beneficiary because of two major medical procedures, the record does not include any documentation from a licensed health professional regarding the petitioner's medical conditions or their effect on her ability to travel. Moreover, section 214(d) of the Act does not require the petitioner to travel to the beneficiary's country of residence, only that the petitioner and beneficiary meet during the two-year period immediately preceding the filing of the Form I-129F. As a result, the meeting requirement could also have been satisfied by the beneficiary traveling to the United States or to a country near the United States to meet the petitioner, thus minimizing any physical hardship on her. The record on appeal does not however, demonstrate that the petitioner and beneficiary considered or explored options for a meeting beyond the petitioner traveling to the Philippines. Therefore, the petitioner has not proved that a meeting with the beneficiary could not have occurred without causing her extreme hardship. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. As the petitioner and beneficiary have met, she 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.