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

D6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 11 2008

MSC 07 150 23264

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 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 petitioner failed to establish that he and the beneficiary had met within the two-year period immediately preceding the filing of the petition, as required under section 214(d) of the Act or that such a meeting would have constituted an extreme hardship or violated the customs of the beneficiary's culture or social practice. *Decision of the Director*, dated July 16, 2007.

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 27, 2007. Therefore, the petitioner and the beneficiary were required to have met during the period that began on February 27, 2005 and ended on February 27, 2007.

At the time of filing, the petitioner indicated that he and the beneficiary had met in 1998. *Form I-129*, dated February 20, 2007. On May 10, 2007, the Director requested the following documentation: divorce decrees for the petitioner and beneficiary; a photograph of the petitioner; a completed Form G-325A for the petitioner; evidence of the petitioner's and beneficiary's meeting within the two-year time period prior to the filing of the Form I-129F; and if the petitioner and beneficiary had not met during this time period, evidence showing that meeting during this time period would have resulted in extreme hardship or violated the customs of the beneficiary's culture or social practice. In response to the director's request for documentation, counsel stated that the applicant could not travel to meet the beneficiary in Cuba because of the United States' restrictions on U.S. citizens' travel to Cuba. *Counsel's Letter*, dated June 20, 2007. Counsel also submitted a photograph of the petitioner, divorce decrees for the petitioner and the beneficiary, and telephone records of calls to Cuba. In addition to this documentation, counsel also submitted evidence of the petitioner's travel to Cuba in 1998. Counsel submitted a letter from the International Hemingway Nautical Club stating that the petitioner was in Cuba from July 29, 1998 to August 11, 1998 to attend a conference at the invitation of the nautical club. *Letter from International Hemingway Nautical Club*, dated August 10, 1998. The record also contains documentation showing that he had permission from the U.S. Coast Guard to travel to Cuba.

On appeal, counsel states that traveling to Cuba would be an extreme hardship to the petitioner because of the restrictions imposed on U.S. citizens in traveling there. *Form I-290B*, dated August 16, 2007.

The AAO recognizes that United States regulations prohibit the petitioner from traveling to Cuba. However, although section 214(d) of the Act requires the petitioner and the beneficiary to meet, it does not require the petitioner to travel to the beneficiary's home country. The record on appeal does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Cuba, including, but not limited to the beneficiary traveling to meet the petitioner in the United States or a third country near or bordering the United States. Thus, the record does not support a finding that a meeting between the petitioner and beneficiary would have resulted in extreme hardship. Accordingly, the appeal will be dismissed.

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