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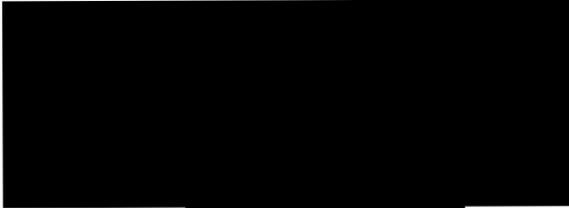
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

WAC 07 193 55146

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 05 2009

IN RE:

Petitioner:

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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting 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 Chile, 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 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 March 12, 2008.

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 June 25, 2007. Therefore, the petitioner and the beneficiary were required to have met during the period that began on June 25, 2005 and ended on June 25, 2007.

At the time of filing, the petitioner indicated that he and the beneficiary met through the internet on April 12, 2004. He stated that they met in Chile from December 27, 2005 to January 8, 2006 and December 22, 2006 to February 2007. *Form I-129*, dated May 31, 2007. The petitioner submitted no evidence of these meetings.

On November 8, 2007, the Director requested additional documentation verifying the petitioner's status in the United States and establishing the meetings between the petitioner and beneficiary. The Director also requested a copy of the beneficiary's birth certificate with an English translation. In response to the director's request for documentation, the petitioner submitted: a copy of the photo identification page of his U.S. passport; a copy of his naturalization certificate; a copy of the beneficiary's photo identification from Chile; and a copy of the beneficiary's birth certificate with English translation. The petitioner also submitted a letter, which states that he and the beneficiary met in March 2004 in Chile and that they have continued to establish a relationship through telephone calls, emails and letters. *Letter from Petitioner*, dated January 10, 2008. He states that he also visits her in Chile once a year. *Id.*

On appeal, the petitioner submits documentation of emails between himself and the beneficiary, a copy of his naturalization certificate and photographs of the petitioner and beneficiary together. The petitioner states that they will be mailing documentation to the Washington DC office or to the California Service Center. He states that they are enclosing documentation, including three photographs of his trip to Chile in January 2008. *Form I-290B*, dated April 10, 2008.

The petitioner has failed to establish that he and the beneficiary met during the two year time period prior to filing the Form I-129F petition, as required by section 214(d) of the Act. Simply stating that he and the beneficiary have met during certain time periods does not constitute enough evidence to meet the burden of proof requirements in these proceedings. Going on record without supporting

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The photographs submitted by the petitioner do not show when they were taken nor does the record contain documentation to place the petitioner with the beneficiary at a certain time so that an inference can be made as to when the photographs were taken. Thus, as stated above, the petitioner has failed to establish that he and the beneficiary have met during the two year time period required by section 214(d) of the Act. Therefore, the appeal will be dismissed.

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.