

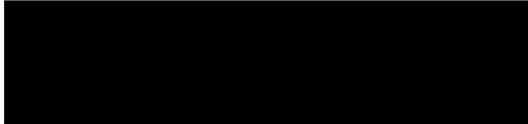
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 04 034 54136

Office: VERMONT SERVICE CENTER

Date: **AUG 05 2005**

IN RE: Petitioner: [REDACTED]
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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Vermont 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 Ghana, 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 acting director denied the petition after determining that the record failed to establish that the petitioner and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. *Decision of the Acting Director*, dated October 4, 2004.

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 at section 214.2 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 (CIS) on November 17, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 17, 2001 and ended on November 17, 2003.

At the time of filing, the petitioner indicated that she had previously met the beneficiary during her last visit to Ghana, but did not indicate the time period in which her visit occurred. On May 26, 2004, the acting director issued a request for evidence asking for documentation of a meeting during the required time period or evidence that such a meeting would have resulted in an extreme hardship for the petitioner or have violated the customs of the beneficiary's culture or social practice. In response, the petitioner submitted copies of passport pages indicating travel to Ghana in January 2001 and February 2004, meetings which were found by the acting director to fall outside the two-year period that preceded the petitioner's filing of the Form I-129F.

On appeal, the petitioner asks that CIS consider the petitioner's previously filed Form I-129F on behalf of the same beneficiary in making its decision and requests the opportunity to make an oral argument regarding the issues in this case.

The petitioner has indicated that she traveled to Ghana in January 2001 and February 2004. However, both meetings fall outside the two-year time period – November 17, 2001 to November 17, 2003 – that immediately preceded her filing of the instant petition. As a result, she has failed to satisfy the meeting requirement of section 214(d) of the Act.

The petitioner states that her travel to Ghana has been conditioned upon the state of her finances and her ability to make childcare arrangements. However, these constraints are faced by many U.S. citizens who wish to file a Form I-129F. As a result, the financial commitments and personal arrangements required for the petitioner's travel to Ghana do not constitute extreme hardship and, thereby exempt her from the meeting requirement of section 214(d) of the Act. 8 C.F.R. § 214.2(k)(2). Further, while section 214(d) of the Act requires that the petitioner and beneficiary meet, it does not require the petitioner to travel to the beneficiary's home country. The AAO finds nothing in the record on appeal to demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Ghana, including, but not limited to, the beneficiary traveling to meet the petitioner in the United States. Taking into account the totality of the circumstances, as described by the petitioner, the AAO does not find that she has established that compliance with the meeting requirement would have resulted in extreme hardship to her or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that exempt a petitioner from the meeting requirement of section 214(d) of the Act. Accordingly, the appeal will be dismissed.

On appeal, the petitioner states that she has met her burden of proof regarding the meeting requirement if her January 2001 meeting with the beneficiary is considered in light of a previous Form I-129F petition filed on May 23, 2001. However, the issue before the AAO is whether the petitioner has satisfied the meeting requirement imposed by section 214(d) of the Act with regard to the instant petition, which was filed on November 7, 2003. The AAO will not address matters related to the petitioner's May 23, 2001 filing, which was previously approved by CIS but returned by the overseas post in light of information developed by the consular interview. Each

petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii).

The petitioner has requested oral argument. However, she has not explained in writing why an oral argument is necessary, as required by regulation. Further, CIS, which has the sole authority to grant or deny a request for oral argument, will grant such argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner has identified no such factors or issues, nor offered any specific reasons why oral argument should be held. The AAO finds the written record of proceedings to fully represent the facts and issues in this case and, consequently, denies the request for oral argument.

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.