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

D6

FILE:

[REDACTED]
EAC 03 084 50309

Office: VERMONT SERVICE CENTER

Date: MAY 11 2006

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 Director, Vermont Service Center. The petitioner subsequently filed a motion to reopen that was granted. The petition was again denied and that denial 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 Republic of Cameroon, 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 acting director denied the petition based on her findings that (1) the petitioner and the beneficiary had not personally met during the two years immediately preceding the date of filing of the petition, as required by section 214(d) of the Act and (2) the evidence submitted by the petitioner in his motion to reopen did not qualify him for an exemption from this requirement. *Decision of the Acting Director*, dated July 15, 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 on May 24, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 24, 2000 and ended on May 24, 2002. However, the petitioner has stated that he has never met the beneficiary in person.

At the time of filing, the petitioner indicated that he had not traveled to meet his fiancée because of an accident requiring surgery and a subsequent diagnosis of diabetes. He provided no additional information regarding these issues until he filed his motion to reopen, at which time he submitted a statement explaining that his health and resulting financial problems had precluded a meeting with the beneficiary, a doctor's opinion stating that ongoing neuropathy in one of his feet would preclude his returning to work as a bus driver, and examples of his continuing contact with the beneficiary.

However, the petitioner's statements regarding his health and the doctor's opinion regarding his inability to return to his previous employment do not establish either that he was unable to travel during the two years immediately preceding his filing of the Form I-129 or that such travel would have, physically, constituted an extreme hardship for him, as required for an exemption under 8 C.F.R. § 214.2(k)(2). Further, the financial costs associated with travel to a foreign country and cited by the petitioner as one of the reasons he did not travel to meet his fiancée are a common concern for individuals filing Form I-129F petitions. As a result, they do not constitute extreme hardship. Finally, the record does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to Cameroon, including, but not limited to the beneficiary traveling to meet the petitioner in the United States or a bordering country.

On appeal, the petitioner now states that he will travel to meet the beneficiary. However, a meeting between a petitioner and beneficiary subsequent to the filing of the Form I-129F does not satisfy the language at section 214(d) of the Act, which, in the instant case, requires the petitioner and beneficiary to have met within the period May 24, 2000 – May 24, 2002. Therefore, the evidence of record does not establish that the petitioner has satisfied the requirements at section 214(d) of the Act. Further, taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find that compliance with the meeting requirement would have resulted in extreme hardship to the petitioner or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that would exempt a petitioner from the requirements at 8 C.F.R. § 214.2(k)(2). Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new I-129F petition on the beneficiary's behalf so that a new two-year period in which the parties are required to have met 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.