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U.S. Citizenship
and Immigration
Services

D6

NOV 18 2005

FILE:

[REDACTED]
EAC 05 023 52890

Office: VERMONT SERVICE CENTER

Date:

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:

[REDACTED]

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont 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 Colombia, 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 had not offered documentation evidencing that he 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, and that the petitioner had not established that compliance with the meeting requirement would result in extreme hardship to the petitioner or violate strict and long-established customs of the beneficiary's foreign culture or social practice. *Decision of the Director*, dated March 29, 2005.

Section 101(a)(15)(K) of 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 November 1, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 1, 2002 and ended on November 1, 2004.

In response to the director's request for evidence and additional information, the petitioner submitted letters written by the petitioner; calling cards; photographs of the beneficiary; receipts for money transfers; copies of photographs of the petitioner and the beneficiary together, dated January 27, 2005; a photocopy of a passport issued to the petitioner reflecting entrance into Colombia on January 19, 2005 and a statement explaining that the petitioner and the beneficiary met on the Internet.

On appeal, counsel states that there is enough evidence in the file to warrant a waiver of the meeting requirement. In addition, counsel asserts that the petitioner and the beneficiary met during January 2005. *Letter from Alexis Irizarry Vega*, dated April 6, 2005. In support of these assertions, counsel submits a statement from the beneficiary's sister, dated April 6, 2005; a statement from the beneficiary's mother, dated April 6, 2005; copies of two photographs of the petitioner and the beneficiary together, dated January 27, 2005; a copy of a passenger receipt issued to the petitioner for travel to Colombia during January 2005; a photocopy of a United States passport issued to the petitioner reflecting entrance into Colombia on January 19, 2005 and departure on January 31, 2005; copies of certificates issued to the petitioner; several color photographs of the petitioner and the beneficiary together and copies of postcards with messages written in Spanish.

The record on appeal establishes that the petitioner and the beneficiary met during January 2005. Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between November 1, 2002 and November 1, 2004. The evidence of record does not establish that the petitioner and the beneficiary met as required. The AAO acknowledges counsel's assertion that the meeting requirement is discretionary and that it may be superseded if the petitioner provides evidence that he shares a bona fide relationship with the beneficiary. *Letter from Alexis Irizarry Vega*. The AAO notes that counsel fails to cite to precedent or to provide documentation to substantiate this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, counsel asserts that, although not stated, the decision of the director is founded in discrimination against the petitioner based on his age. *Letter from Alexis Irizarry Vega*. The AAO finds that the contention of counsel is without support or merit in the record.

Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. 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 Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.