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U.S. Citizenship
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Services

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FILE:



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Office: NEBRASKA SERVICE CENTER

Date: NOV 22 2005

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 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, Nebraska 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 The Philippines, 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 after determining that the petitioner had failed to establish that he and the beneficiary had personally met within the two-year period preceding the filing of the petition, as required by section 214(d) of the Act. The director also found the petitioner to be ineligible for an exemption of the meeting requirement under 8 C.F.R. § 214.2(k)(2). *Decision of the Acting Director*, dated March 18, 2005.

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 October 15, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on October 15, 2002 and ended on October 15, 2004.

At the time of filing, the petitioner indicated that he had previously met the beneficiary, but subsequently stated that this was not the case. In response to the director's request for evidence, the petitioner indicated that he traveled to The Philippines following his filing of the Form I-129F to meet the beneficiary. On appeal, he apologized for unknowingly filing the Form I-129F prior to meeting his fiancée. According, the record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act. Nor is there evidence in the record that would provide a basis for exempting him from that requirement. Although the petitioner has described significant medical problems, he does not indicate that these problems prevented him from meeting the beneficiary during the specified time period and submits copies of the pages of his U.S. passport as proof of a November 2004 trip to The Philippines. Accordingly, the appeal of the instant case will be dismissed.

However, pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Now that the petitioner and beneficiary have met, he may file a new Form I-129F petition on her behalf so that a new two-year period in which the parties are required to have met will apply. The AAO notes that the record indicates that the petitioner did not comply with all of the filing requirements for the Form I-129, specifically the submission of a Form G-325A for the beneficiary, and digital photographs of himself and the beneficiary. For a Form I-129F to be approved, a petitioner must submit all of the documentation indicated in the filing instructions (a copy of which is enclosed).

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.

Enclosure