



U.S. Citizenship
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Services

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FILE: [REDACTED]
LIN 04 252 51836

Office: NEBRASKA SERVICE CENTER

Date: NOV 22 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, Nebraska 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 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 record did not establish that the petitioner and beneficiary had personally met within the two-year period immediately preceding the filing of the petition, as required by section 214(d) of the Act. He further determined that the petitioner had failed to prove that his compliance with that requirement would have constituted an extreme hardship on him or would have violated the customs of the beneficiary's culture or social practice. *Decision of the Acting Director*, dated March 8, 2005.

The AAO notes that this is the second Petition for Alien Fiancé(e) (Form I-129F) that the petitioner has filed on behalf of the beneficiary. The petitioner's previous Form I-129F, filed on June 16, 2003, was also denied based on the petitioner's failure to comply with the meeting requirement of section 214(d) of the Act.

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 8 C.F.R. § 214.2(k)(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 Form I-129F with Citizenship and Immigration Services (CIS) on September 13, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on September 13, 2002 and ended on September 13, 2004.

At the time of filing, the petitioner indicated that he and the beneficiary had not previously met, stating that his health did not allow him to travel overseas. To support his claim, he submitted an affidavit from his doctor stating that he was unable to travel beyond a 50 miles radius. In response to the director's December 16, 2004 request for evidence, which asked the petitioner to submit photographs of himself and the beneficiary, as well as a copy of his medical history, the petitioner provided his own hand-written account of the health problems that restrict his travel. On appeal, the petitioner again references his inability to travel, noting child-care responsibilities in addition to his medical problems.

While the AAO notes the health problems and child-care duties that the petitioner indicates prevent him from traveling outside the United States, his inability to travel does not establish that compliance with the meeting requirement would have constituted an extreme hardship for him. Although section 214(d) of the Act requires that the petitioner and beneficiary meet during the two-year period preceding the filing of the Form I-129F, it does not require the petitioner to travel to the beneficiary's home country. As a result, the petitioner must not only establish his own inability to travel but also prove that, during the specified period, he and the beneficiary exhausted all attempts to meet in person at a location that would not have required his travel. The record, however, does not demonstrate that the petitioner and the beneficiary explored options to meet in the United States.

Accordingly, the record does not establish that the petitioner has complied with the meeting requirement of section 214 (d) of the Act. Nor does it include any evidence that would establish a basis for exempting the petitioner from that requirement. 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 him 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. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Should the petitioner and beneficiary meet, he may file a new I-129F petition on the beneficiary's behalf so that a new two-year meeting period 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.