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**U.S. Citizenship
and Immigration
Services**

DL



FILE:

WAC 04 093 51899

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 02 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

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 director denied the petition after determining that the record failed to establish that the petitioner and the beneficiary had personally met during the two-year period that preceded the filing of the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated October 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 February 13, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on February 13, 2002 and ended on February 13, 2004.

At the time of filing, the petitioner indicated that he had previously met the beneficiary and submitted copies of a passenger coupon for a round-trip airline ticket to The Philippines, with the departure date of October 24, 2001 and return date of February 20, 2002; a February 16, 2002 receipt from Philippine Airlines in the amount of \$50 for payment of a rebooking penalty, issued in The Philippines; a tax exemption certificate issued by the Philippines Tourism Authority on March 19, 2002; and photographs. In response to the director's July 29, 2004 request for evidence, the petitioner resubmitted the originals of the preceding documents and additional photographs. He also provided evidence of an August 2004 trip to visit the beneficiary, including copies of pages from his U.S. passport to document that travel.

The director concluded that the petitioner had failed to establish he and the beneficiary had met during the two-year period immediately preceding the filing of the Form I-129F. While the director noted the petitioner's submission of the airline coupon and the rebooking penalty receipt, he also found the petitioner's U.S. passport to show only the petitioner's 2004 travel to The Philippines.

On appeal, the petitioner states that he traveled to The Philippines in 2001 on his Philippine passport and that this passport was damaged as a result of being inadvertently laundered. To support his statements he submits copies of the face page of his Philippine passport and the page he claims would establish his presence in The Philippines during the specified period had it not been damaged by washing. He also provides an affidavit from a cousin who states that she traveled with him on his return from The Philippines on March 19, 2002 and copies of the face page of her Philippine passport and a page showing a Philippine departure stamp of March 19, 2002. The petitioner states that he traveled with his cousin because of his impaired vision and submits documentation to prove that he is legally blind. He also provides two affidavits from individuals attesting to his presence in The Philippines during the specified period.

While the AAO takes note of the petitioner's explanation of his inability to provide a passport bearing proof of his presence in The Philippines in 2001-2002 and the affidavits he submits to establish that presence, such evidence is insufficient to place him in The Philippines during the specified period. The photographs submitted by the petitioner also fail to satisfy the petitioner's burden of proof in these proceedings. However, the AAO finds the petitioner's passenger coupon for his round-trip ticket to The Philippines, with a departure date of October 24, 2001 and return date of February 20, 2002; his February 16, 2002 receipt for payment of a rebooking penalty, issued in The Philippines; and the Philippine tax exemption certificate issued on March 19, 2002 to establish his presence in The Philippines during the period February 13, 2002 to February 13, 2004. Therefore, he is found to have complied with the meeting requirement of section 214(d) of the Act. The appeal is sustained. The petition is approved.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.