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FILE: [Redacted]
WAC 03 242 54218

Office: CALIFORNIA SERVICE CENTER

Date: SEP 20 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:



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, California 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 Ukraine, 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 failed to establish that he and the beneficiary had personally met within the two-year period preceding the date of filing the petition, as required by section 214(d) of the Act. The director also found the petitioner to be ineligible for an exemption from the meeting requirement under 8 C.F.R. § 214.2(k)(2). *Decision of the Director*, dated June 29, 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 August 25, 2003. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began August 25, 2001 and ended August 25, 2003.

At the time of filing, the petitioner indicated that he had previously met the beneficiary and that he had known her since 1970. He did not state when he and the beneficiary had last met, but did submit a letter from a family practice physician stating that his health precluded him from flying to Italy, the beneficiary's country of residence. In response to the director's request for evidence either that a meeting with the beneficiary had occurred during the specified period or that compliance with the meeting requirement would have constituted an extreme hardship for him or violated the customs of the beneficiary's culture or social practice, the petitioner stated that his health precluded his travel to meet the beneficiary outside the United States and that she had been unable to obtain a visa to visit him in the United States. As proof of his ill health, the petitioner provided a second letter from the same family practice physician who stated that the petitioner had an extreme fear of flying that made it impossible for him to travel to Italy to meet the beneficiary and also suffered from diabetes, generalized anxiety and severe depression. The petitioner also submitted a copy of an April 1, 2004 letter from the U.S. consulate in Naples denying a nonimmigrant visa to the beneficiary. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

On appeal, counsel submits further evidence concerning the petitioner's health in the form of an August 14, 2004 letter from the psychiatrist treating the petitioner. The psychiatrist states that the petitioner suffers from severe panic disorder with the following symptoms: chest pain, shortness of breath, palpitations, agoraphobia, a sense of impending doom and tremulousness. The letter also indicates that the petitioner is subject to depression, social isolation, sleeping problems, and poor appetite, and has difficulty with concentration, memory and focus. The psychiatrist states that the petitioner's extreme fear of flying results in panic attacks and that his condition prohibits him from visiting the beneficiary. The AAO finds the petitioner's evidence to establish that he is unable to travel by air to meet with the beneficiary.

However, the petitioner's inability to travel by air does not establish that compliance with the meeting requirement would have constituted an extreme hardship for him. He must also prove that, during the specified period, he and the beneficiary explored all reasonable options for meeting in person at a location that would have reduced the physical hardship on him.

Counsel contends that the evidence submitted by the petitioner regarding the visa denial issued to the beneficiary on April 1, 2004 offers such proof. The AAO does not agree. The beneficiary's single attempt to obtain a nonimmigrant visa to visit the United States did not take place during the specified period. As a result, the record offers no evidence that, between August 25, 2001 and August 25, 2003, the petitioner and beneficiary explored any options for a meeting beyond the petitioner traveling to Italy, including the beneficiary traveling to the United States or to Mexico, a location that would not have required air travel on the part of the petitioner. The AAO also notes that the submission of a single nonimmigrant visa petition to a U.S. consulate, even had it occurred during the specified period, would be insufficient proof of an exhaustive effort on the part of the petitioner and beneficiary to arrange a meeting.

Taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find the record before it to establish 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. 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. Should the petitioner and beneficiary meet, he may file a new Form 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.