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U.S. Citizenship  
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 09 2006**

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

PETITION: Petition for Alien Fiancé(e) Pursuant to § 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, Chief  
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 citizen of the United States who seeks to classify the beneficiary, a citizen of Colombia, as the fiancée of a United States citizen pursuant to § 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 and the beneficiary had not personally met within two years before the date of filing the petition, as required by § 214(d) of the Act, or that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate the beneficiary's customs.

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 § 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 September 29, 2005. The petitioner and the beneficiary were required to have met during the two-year period immediately preceding that date. Counsel asserts that travelling outside the United States would cause the petitioner to suffer extreme hardship on account of his advanced age and serious health problems. Counsel also states that the beneficiary is unable to travel to the United States, as the U.S. consulate in Colombia denied her visitor's visa application. Counsel submits evidence substantiating both contentions.

The medical documentation on the record indicates that the petitioner, who is 86 years old, suffers from heart disease which requires monitoring, medication, and surgery, and that air travel abroad could be dangerous to his health. The AAO notes that although § 214(d) of the Act requires the petitioner and the beneficiary to meet, it does not require the petitioner to travel to the beneficiary's home country. Nevertheless, in the instant case it appears that the lengthy travel period involved in journeying by land to either Canada or Mexico from the petitioner's current location in South Carolina would also cause the petitioner to experience extreme hardship, particularly since he would be far from his regular physicians.

The record also contains electronic correspondence from the U.S. consulate in Bogota dated August 24, 2005, that states that the denial of the beneficiary's non-immigrant (visitor's) visa will not be reversed. Thus, the beneficiary is unable to procure admission to the United States in order to meet the petitioner.

The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, however, the AAO agrees that compliance with the meeting requirement would result in extreme hardship to the petitioner. Therefore, the appeal will be sustained.

The burden of proof in these proceedings rests solely with the petitioner. *See* § 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

**ORDER:** The appeal is sustained.