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U.S. Citizenship
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Services

DG

FILE:

[REDACTED]
EAC 05 060 52940

Office: VERMONT SERVICE CENTER

Date: JAN 09 2006

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.

PUBLIC COPY

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont 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 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. He further found that the petitioner did not qualify for an exemption from the meeting requirement. *Decision of the Director*, dated April 7, 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 January 19, 2005. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on January 19, 2003 and ended on January 19, 2005.

At the time of filing, the petitioner indicated that he had not previously met the beneficiary, stating that his three children could not be removed from school to travel with him to The Philippines and that he did not have the financial resources to hire someone to care for them in his absence. He submitted copies of his telephone records and correspondence to establish his relationship with 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.

The AAO notes the petitioner's statements regarding his parental responsibilities. However, they do not provide a basis for finding that compliance with the meeting requirement would have been an extreme hardship for him. Many individuals who plan to travel overseas before filing Form I-129Fs must find ways to meet personal obligations, including those involving family or employment, while they are away. The same is true for the financial constraints the petitioner indicates prevented him from employing a childcare provider for his children while he was out of the country. The financial costs associated with overseas travel are a cause of concern for many Form I-129F petitioners. Accordingly, the reasons the petitioner states prevented his travel to meet the beneficiary do not establish that his compliance with the meeting requirement would have been an extreme hardship.

Further, while section 214(d) of the Act stipulates that a petitioner and beneficiary must meet during the two-year period immediately preceding the filing of the Form I-129F, it does not require the petitioner to travel to the beneficiary's home country. The petitioner and beneficiary could have satisfied the requirements of section 214(d) had the beneficiary traveled to meet the petitioner in the United States or in a country bordering the United States. The record, however, contains no evidence to indicate that the petitioner and beneficiary considered or pursued such options. Therefore, 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. 8 C.F.R. § 214.2(k)(2).

Subsequent to the filing of his appeal, the petitioner submitted evidence of a May 2005 trip to The Philippines. However, the petitioner's travel occurred four months after he filed the Form I-129F on behalf of the beneficiary. Therefore, although the petitioner may have established that he has now met the beneficiary, this meeting did not occur within the two-year time period specified above – January 19, 2003 to January 19, 2005 – and does not comply with the meeting requirement of section 214(d) of the Act, as it relates to the instant petition. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. As the petitioner and beneficiary have now met, 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.