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

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[REDACTED]

FILE:

EAC 05 116 51048

Office: VERMONT SERVICE CENTER

Date: JUN 15 2006

IN RE:

Petitioner:

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:

[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, 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 Eritrea, 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 not offered documentation evidencing that he and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act, and that the petitioner had not established that compliance with the meeting requirement would result in extreme hardship to the petitioner. *Decision of the Director*, dated June 25, 2005.

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) 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 March 16, 2005. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 16, 2003 and ended on March 16, 2005.

In response to the director's request for evidence and additional information, the petitioner requested an exemption from the meeting requirement based on extreme hardship to the petitioner. The petitioner stated that he lacked the financial resources to travel to meet the beneficiary and that his presence was required in the United States in order to care for his son.

On appeal, counsel states that the petitioner has a limited salary and is unable to leave his minor child alone in the United States. *Appeal-Motion for Reconsideration*, undated. Counsel further contends that the director erred in holding that financial hardship is common to all families and that the pertinent question is whether the demonstrated financial hardship is extreme. *Id.*

Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between March 16, 2003 and March 16, 2005. The evidence of record does not establish that the petitioner and the beneficiary met as required. The financial and time commitments required for travel to a foreign country are requirements common to individuals filing the Form I-129F petition and do not constitute extreme hardship to the petitioner. The AAO acknowledges the assertion of counsel that the petitioner cannot afford to travel to Eritrea, however the record offers evidence to the contrary by establishing that the petitioner has a history of periodic travel to Eritrea and that his discretionary spending has been documented to include over \$700 in telephone charges in a single month. *See Affidavit of* [REDACTED] undated (stating that he traveled to Eritrea with the petitioner in 1997); *see also Form I-129F, Response to Question 18*, dated March 16, 2005 ("I visited ...from 01/01/03 – 02/03/03"); *see also* [REDACTED]. Further, based on the record, the AAO finds counsel's assertions regarding the petitioner's child to be unpersuasive. The record reflects that the applicant's son is no longer a minor as contended by counsel. *See Affidavit of* [REDACTED] (establishing that the applicant's son was 12 years old in 1997 and therefore has reached the age of majority). The AAO acknowledges that the applicant's son has a documented history of mental illness which requires constant attention. *See Discharge Summary for* [REDACTED] [REDACTED] dated June 12, 2003. However, the record reflects that the petitioner's previous spouse, who is also his son's mother, resides in the area with the petitioner's daughter and the record fails to demonstrate that these family members are unable to provide care for the petitioner's son while the petitioner travels to meet the beneficiary. *See id.* (stating that the petitioner's son lived with his mother and sister at the time of the report). Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.