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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2006
WAC 05 147 53442

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 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 dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Vietnam, 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 filing of 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 November 10, 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 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 April 21, 2005. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on April 21, 2003 and ended on April 21, 2005.

At the time of filing, the petitioner indicated that he had previously met the beneficiary, but had not seen her since 1971. In response to the director's request for evidence, the petitioner submitted a notarized statement outlining his and the beneficiary's family histories in Vietnam and why he and the beneficiary would be at risk if he traveled to meet her in Vietnam in compliance with section 214(d) of the Act. The petitioner's statement also indicated that travel to Vietnam would impose a significant financial hardship on him and adversely affect his ability to care for the beneficiary and her two sons upon their arrival in the United States. He further asserted that the beneficiary does not have the financial ability to travel to the United States.

On appeal, counsel contends that the extraordinary circumstances of the petitioner's and beneficiary's history warrant an exemption from the meeting requirement. She further asserts that the petitioner suffers from a chronic back problem and that any travel would constitute an extreme hardship for him. In support of her statements regarding the petitioner's health, counsel submits copies of a letter from the medical clinic where the petitioner is a patient and a copy of a medical imaging report on the condition of the petitioner's lower spine.

The AAO has noted the statements made by the petitioner in response to the director's request for evidence concerning his fears of returning to Vietnam, as well as the financial concerns that compliance with the meeting requirement would create for both the petitioner and the beneficiary. It has also considered the evidence of the petitioner's medical condition submitted on appeal. However, none of the concerns raised by and on behalf of the petitioner establish a basis on which he may be exempted from the meeting requirement of section 214(d) of the Act, 8 U.S.C. § 1184(d).

The petitioner fears returning to Vietnam. However, section 214(d) of the Act requires only that the petitioner and beneficiary meet during the two-year period preceding the filing of the Form I-129F, not that the petitioner travel to the beneficiary's home country. Accordingly, the petitioner and beneficiary could have satisfied the meeting requirement by meeting at a location outside Vietnam, thus avoiding the potential reprisals feared by the petitioner. The record on appeal does not, however, demonstrate that the petitioner and the beneficiary considered or explored options for a meeting beyond the petitioner traveling to Vietnam. Therefore, the petitioner's fear of returning to Vietnam does not establish that a meeting with the beneficiary during the specified period would have been an extreme hardship for him.

The petitioner's statements regarding the financial hardship that would be imposed on him by traveling to Vietnam and the beneficiary's inability to pay for travel to the United States also fail to provide a basis for exempting him from the meeting requirement. The cost of overseas travel is a concern for many individuals who

wish to file Form I-129Fs. Accordingly, the costs of traveling between Vietnam and the United States do not constitute extreme hardship under the regulation at 8 C.F.R. § 214.2(k)(2).

The evidence submitted by counsel on appeal regarding the petitioner's health is also insufficient to establish that a meeting with the beneficiary during the specified period would have created an extreme hardship for the petitioner. While his chronic back problems might preclude lengthy travel, the meeting requirement, as previously discussed, does not require the petitioner to travel to meet the beneficiary. Further, the AAO notes that the clinic letter regarding the beneficiary's health, which counsel asserts has been provided by the petitioner's doctor, does not indicate that the writer is the petitioner's doctor or a doctor. Accordingly, the AAO finds the opinions expressed in the letter to be of little evidentiary value for the purposes of demonstrating the nature of the medical restrictions on the petitioner's ability to travel.

As the record offers no evidence that compliance with the meeting requirement would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the petitioner has also failed to establish a basis for exemption under the second exemption criterion at 8 C.F.R. § 214.2(k)(2).

The record establishes neither that the petitioner has complied with the meeting requirement of section 214(d) of the Act, 8 U.S.C. § 1184(d), nor offers a basis for exempting him from this requirement. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. Should the petitioner and beneficiary meet, he may file a new Form I-129F petition on her 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. The petition is denied.