U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

DC

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 29 2006
WAC 05 226 52057

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: 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.

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 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 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 December 19, 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 August 12, 2005. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on August 12, 2003 and ended on August 12, 2005.

At the time of filing, the petitioner indicated that he had not previously met the beneficiary, stating that the climate of The Philippines would have an adverse effect on his asthma and related heart problems. In response to the director's request for evidence, the petitioner also stated that he was aware of the anti-American sentiment in The Philippines and feared for his safety should he travel there.

On appeal, the petitioner submits a copy of a statement from his physician who indicates that the petitioner has multiple medical conditions – asthma, hypertension, hyperlipidemia and myalgia. The physician states that in light of the petitioner's age (67 years) and health, he would not advise overseas travel, noting that, in the past, a tropical environment has exacerbated the petitioner's asthma.

The AAO accepts the statement from the petitioner's physician indicating that the petitioner's health precluded travel to The Philippines during the specified period. However, while the petitioner's medical condition may have prevented him from traveling to The Philippines, it does not establish that a meeting with the beneficiary during the specified period would have posed an extreme hardship for him. Section 214(d) of the Act does not require the petitioner to travel to the beneficiary's country of residence, only that the petitioner and beneficiary meet during the two-year period immediately preceding the filing of the Form I-129F. Accordingly, the meeting requirement could also have been satisfied by the beneficiary traveling to the United States or to a country near the United States to meet the petitioner, thus minimizing any physical hardship on him.

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 The Philippines. Therefore, the petitioner has failed to prove that a meeting with the beneficiary during the specified period would have caused him extreme hardship. As a result, he is not eligible for an exemption from the meeting requirement under the regulation at 8 C.F.R. § 214.2(k)(2).

The record does not address whether a meeting with the petitioner would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the other basis on which a petitioner may be exempted from the meeting requirement of section 214(d) of the Act. 8 C.F.R. § 214.2(k)(2). Accordingly, 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.