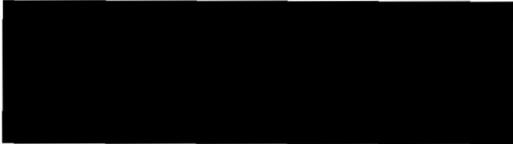




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



DU

FILE: [REDACTED]
EAC 05 130 50767

Office: VERMONT SERVICE CENTER

Date: FEB 28 2007

IN RE: Petitioner: [REDACTED]
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 Acting Director, Vermont 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 Mexico, 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 Acting Director denied the petition after determining that the record did not establish that the petitioner and beneficiary had personally met within the two-year period immediately preceding the filing of the petition, as required by section 214(d) of the Act. The Acting Director further determined that the record did not establish a basis on which to exempt the petitioner from this requirement. *Decision of the Acting Director, dated October 28, 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 4, 2005. Therefore, the petitioner and the beneficiary were required to have met during the period that began on April 4, 2003 and ended on April 4, 2005.

At the time of filing, the petitioner indicated that he had met the beneficiary, but did not specify the date. The petitioner stated that he met the beneficiary in Nuevo Laredo, Mexico when he was living in Laredo, Texas. *Statement written by the petitioner, dated April 1, 2005.* The petitioner lived in Laredo, Texas from July 1999 until July 2002. *Form G-325A.* The petitioner indicated that he separated from the beneficiary due to his incarceration in the federal penitentiary. *Statement written by the petitioner, dated April 1, 2005.* Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act.

On appeal, the petitioner states that he is the biological father of the beneficiary's child born on December 6, 2002. *Statement from the petitioner.* The petitioner stated he was released from prison on November 3, 2004. *Id.* The petitioner also submitted a letter from his probation officer noting that he was sentenced on August 9, 2002. *Letter from [REDACTED] U.S. Probation Officer, United States District Court, Western District of Pennsylvania, Probation and Pretrial Services Office, dated November 7, 2005.* He was released from all custody and began his term of supervised release on November 3, 2004. *Id.* His supervised release is due to expire on November 2, 2007. *Id.* The petitioner's mother passed away on November 7, 2004. *Statement from the petitioner; See Also death certificate.* The petitioner indicated that he was unable to visit the beneficiary until May 2, 2005 because he was under supervised release and his mother had died. *Statement from the petitioner.* As proof of his travel, the petitioner submitted photographs of himself and the beneficiary and a credit card bill for an airline ticket purchased on March 14, 2005. The AAO notes, however, that the photographs are undated, the credit card bill is not in the petitioner's name, and there is no indication that the ticket was purchased for travel to Mexico. As a result, the record fails to include the type of documentation necessary to establish a meeting between the petitioner and beneficiary. Furthermore, even if the petitioner had submitted documentation supporting a May 2, 2005 meeting, he still has not established compliance with the meeting requirement of section 214(d) of the Act, as it relates to the instant petition.

The petitioner's alleged trip to meet the beneficiary occurred one month after he filed the Form I-129F on behalf of the beneficiary. While the AAO does not find that the petitioner established that he had met the beneficiary in May 2005 due to a lack of supporting documentation, it notes that even if he had submitted sufficient supporting documentation, this meeting did not occur within the two-year time period specified above – April 4, 2003 to April 4, 2005 – and does not satisfy section 214(d) of the Act. Further, the petitioner has offered no evidence to establish that compliance with the meeting requirement during the specified period would have constituted an extreme hardship for him or that such a meeting would have violated the customs

of the beneficiary's culture or social practice. The AAO does not find that the death of the petitioner's mother constituted an extreme hardship for the petitioner, as his mother passed away on November 7, 2004 and the petitioner had until April 4, 2005 to comply with the two-year meeting requirement. Additionally, there is nothing in the record that demonstrates that the petitioner was unable to travel while under supervised release. Therefore, the appeal will be dismissed.

The denial of the petition is without prejudice. If the petitioner has supporting documentation to prove that he and the beneficiary have met, the petitioner may file a new I-129F petition on the beneficiary's behalf so that a new two-year meeting period 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.