

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

106



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 07 2007  
WAC 07 001 51854

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 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 Mexico, as the fiancé 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).

On December 20, 2006 Citizenship and Immigration Services (CIS) requested the following evidence: verification of the petitioner's status as a U.S. citizen; evidence of the last meeting between the petitioner and the beneficiary; a birth certificate with English translation for the beneficiary; one passport photograph each for the petitioner and the beneficiary; Forms G-325A; the translation of any foreign documents; statements from the petitioner and the beneficiary, and any other evidence to establish their mutual intent to marry. On January 18, 2007 the petitioner submitted a response to the request for evidence which included a copy of the petitioner's U.S. birth certificate; a copy of the beneficiary's Mexican birth certificate and English translation; a copy of the petitioner's daughter's U.S. birth certificate; Forms G-325A for the petitioner and beneficiary; a January 12, 2007 statement from the petitioner indicating that she and the beneficiary have a daughter born on December 25, 2006; individual photographs of the petitioner and the beneficiary; and photographs of the petitioner and the beneficiary together. The Director denied the petition after determining that the petitioner had not submitted evidence to establish the fiancée relationship within the meaning of section 101(a)(15)(K) of the Act. *Decision of the Director*, dated February 15, 2007.

Section 8 C.F.R. § 103.2(a) states:

(1) General. Every application, petition or other document submitted on a form prescribed by this chapter shall be executed and filed in accordance with the instructions contained on the form, each instruction being hereby incorporated into the particular section of the regulations requiring its submission...

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 September 29, 2006. Therefore, the petitioner and the beneficiary were required to have met during the period that began on September 29, 2004 and ended on September 29, 2006.

On appeal, the petitioner states she met the beneficiary over three years ago and they have a baby together. *Form I-290B*. She submits a sworn statement, photographs with the beneficiary, and statements from her mother and aunt in support of the petition. The AAO notes that the date November 15, 2005 is handwritten on the back of one of the photographs of the petitioner with the beneficiary. While the AAO acknowledges this particular photograph, it notes that a handwritten date is not definitive proof of when the photograph was taken. The record fails to include copies of boarding passes or transportation tickets showing that the petitioner and the beneficiary were in the same country during the two year period immediately preceding the filing of the Form I-129F. Furthermore, although the petitioner states that the beneficiary is the father of her child who was born on December 25, 2006, the unofficial birth certificate submitted into the record does not name a father. In the statement she submits on appeal, the petitioner contends that the beneficiary is not named on their child's birth certificate because he was not present at the birth. She asserts that to have been named on the certificate, the beneficiary would have to have been present to sign it. The AAO notes the petitioner's explanation for the failure of the birth certificate to identify the beneficiary, but finds her claims, in the absence of any documentary evidence, to be insufficient to establish him as her daughter's father. Going on record without supporting documentary evidence is not sufficient to meet the petitioner's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190

(Reg. Comm. 1972)). Accordingly, there is no documentation showing that the petitioner and beneficiary met during the required meeting period. As the record does not establish that the petitioner and beneficiary met within the two-year time period specified above – September 29, 2004 to September 29, 2006 – the AAO finds that the petitioner has not established compliance with the meeting requirement of section 214(d) of the Act. As the record also fails to establish that a meeting between the petitioner and the beneficiary would have violated the customs of the beneficiary’s culture or social practice, the appeal will be dismissed.

The denial of the petition is without prejudice. The petitioner may file a new I-129F petition on the beneficiary's behalf.

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.