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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FEB 16 2010

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Alien Fiancé(e) Pursuant to § 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 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 fiancé(e) of a United States citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director denied the nonimmigrant visa petition because the record contains no evidence that the petitioner and the beneficiary personally met within the two-year period immediately preceding the filing of the petition or that the petitioner qualified for a waiver of that requirement. On appeal, the petitioner states that he was unable to visit the beneficiary during the two-year period immediately preceding the filing of the petition due to a medical condition and for the reasons expressed in his response to the director's request for evidence (RFE), namely that his job responsibilities precluded him from taking time off work. As supporting documentation, the petitioner submits: personal statements, dated February 20, 2008; a letter from [REDACTED], dated February 15, 2008; and a letter from the petitioner's former employer, [REDACTED], dated February 12, 2008.

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

Subject to subsections (d) and (p) of section 214, an alien who -

(i) is the fiancée or fiancé of a citizen of the United States . . . and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission.

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), states in pertinent part that a fiancé(e) petition:

[s]hall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 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 U.S. Citizenship and Immigration Services (USCIS) on June 19, 2007. Therefore, the petitioner and the beneficiary were required to have met in person between June 19, 2005 and June 19, 2007.

When he filed the petition, the petitioner responded "Yes" to question #18 on the I-129F Petition that asks whether he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition. The petitioner stated that he met the beneficiary online and had daily communications with her for over seven months "on [the] telephone computer and via web cams." The petitioner also stated that he had been on the road and living in motels since October 10, 2006, working on a contract job for the government.

On November 13, 2007, the director issued an RFE, requesting that the petitioner submit: evidence that he and the beneficiary had met in person within the two-year period immediately preceding the filing of the petition or, in the alternative, evidence to establish why the requirement of an in-person meeting should be waived; evidence that his marriage to [REDACTED] had been legally terminated; passport-style photographs for himself and the beneficiary; and completed, signed G-325A, Biographic Information, forms for himself and the beneficiary.

In his January 7, 2008 response to the director's RFE, the petitioner stated that he was unable to visit the beneficiary during the two-year period immediately preceding the filing of the petition because of the following: he was unable to get off work; he had started a new job on August 13, 2007, and it was a busy time of the year; and he was unable to travel by air because of ear problems. The petitioner submitted: passport-style photographs for himself and the beneficiary; a divorce decree as evidence of the legal termination of his marriage to [REDACTED] G-325A forms for himself and the beneficiary; documentation showing that he paid for the beneficiary's orthodontic treatment and other dental procedures; correspondence between himself and the beneficiary; and an undated letter from his supervisor, [REDACTED].

The director denied the petition because the petitioner failed to establish that he and the beneficiary had met, as required under section 214(d) of the Act, or that he qualified for an exemption from this meeting requirement, pursuant to 8 C.F.R. § 214.2(k)(2).

On appeal, the petitioner states that he was unable to visit the beneficiary within the two-year period immediately preceding the filing of the petition because of the medical problems he suffers from air travel and because he was unable to take off time from his jobs. 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 have resulted in hardship to the petitioner. The petitioner's activities

related to his jobs are not sufficient to waive the requirement of an in-person meeting with the beneficiary within the two years immediately preceding the filing of the petition. It is noted that, in his February 12, 2008 letter, the petitioner's former boss, [REDACTED], stated that the beneficiary avoided air travel for medical reasons, but he did not state that the petitioner was unable to get time off during his employment at his company from October 2006 to August 2007. In fact, [REDACTED] stated that the petitioner returned to Oklahoma "for occasional leave." This information conflicts with the petitioner's assertion in his December 31, 2007 letter submitted in response to the director's RFE that he could not get off work during this same time period. The record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is also noted that in his undated letter submitted in response to the director's RFE, [REDACTED] stated that the petitioner was a new-hire and had no vacation time. The petitioner indicated in his January 7, 2008 response to the director's RFE, however, that he had started his new job on August 13, 2007, which is subsequent to the two-year period immediately preceding the filing of the petition, between June 19, 2005 and June 19, 2007. Thus, information related to his new job is not relevant to these proceedings.

The petitioner also submits a letter from [REDACTED] dated February 15, 2008, who states, in part, that air travel causes the petitioner severe pain and impaired hearing because of his "severe sinus and eustachean tube dysfunction." [REDACTED] concludes: "Medical treatment has not been effective and I suggest he not fly, as this may eventually cause permanent impairment."

While we do not question [REDACTED] expertise, section 214(d) of the Act does not require that the petitioner travel to the beneficiary's home country for the requisite meeting. The record on appeal does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to the Philippines, including, but not limited to the beneficiary traveling to meet the petitioner in the United States or a bordering country. Moreover, the time commitment required for travel to a foreign country is a common requirement to those filing the Form I-129F petition and does not constitute extreme hardship to the petitioner. The evidence of record does not establish that the petitioner and the beneficiary met as required. 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. Accordingly, the appeal is dismissed. The petition must be denied.

The denial of the petition is without prejudice. Should the petitioner wish to file a new I-129F Petition, he should ensure that he has documentary evidence of having met the beneficiary in person within the two years immediately preceding the filing of the petition, or sufficient evidence to establish that the requirement should be waived. If necessary, the petitioner should consult the instructions to the Form I-129F to understand the specific documents that he should file along with the petition. The petitioner may download the I-129F petition with the instructions from the USCIS website at www.uscis.gov, or he may call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 to have the form and the instructions mailed to his home.

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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.