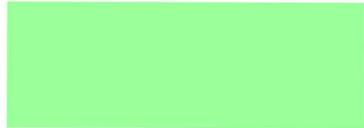




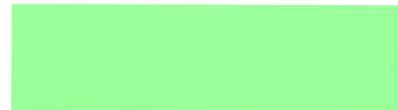
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: Office: CALIFORNIA SERVICE CENTER

JUN 10 2013



IN RE: Petitioner:  
Beneficiary:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center (the director), denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Cuba, as the fiancé 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 petitioner failed to establish that she and the beneficiary met in person during the two-year period immediately preceding the filing of the Petition for Alien Fiancé(e) (Form I-129F), or that she is exempt from such a requirement. On appeal, the petitioner submits evidence of having traveled to Havana, Cuba on October 19, 2012.

*Applicable Law*

Section 101(a)(15)(K) of the Act defines "fiancé(e)" as:

An alien who 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 entry. . . .

Section 214(d) of the Act, 8 U.S.C. § 1184(d), 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 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, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2):

As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner; or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social 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.

*Factual and Procedural History*

The petitioner filed the fiancé petition with U.S. Citizenship and Immigration Services (USCIS) on June 4, 2012. Therefore, the petitioner and the beneficiary were required to have met in person between June 4, 2010 and June 4, 2012. When she filed the petition, the petitioner stated that she last met the beneficiary in Cuba when she traveled to the country in 2008. In a July 13, 2012 Request for Evidence (RFE), the director informed the petitioner that she must either submit evidence of having met the beneficiary in person during the required time period or request a waiver of the meeting requirement. In response, the petitioner reiterated that she last visited the petitioner in 2008. She submitted a copy of her expired Cuban passport, which contains a March 22, 2008 departure stamp from Cuba. She also provided photographs of herself and the beneficiary, which she indicated were taken in 2008.

In denying the petition, the director determined that the petitioner failed to establish that she and the beneficiary met in person during the two-year period immediately preceding the filing of the petition, or that she is exempt from such a requirement. On appeal, the petitioner asserts that she is planning to travel to Cuba to visit the beneficiary. The petitioner provides copies of her boarding passes and a U.S. passport admission stamp, reflecting that she traveled to Havana, Cuba on October 19, 2012 and returned to the United States on November 2, 2012.

*Analysis*

As stated at section 214(d)(1) of the Act, the relevant time period in which the personal meeting between the petitioner and the beneficiary must occur is within the two-year period before the filing date of the petition. Here, the couple met four years prior to the filing of the petition and had another meeting several months after the petition was filed. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). While the evidence of the couple's last meeting would be relevant to any new fiancé petition that the petitioner may file for the beneficiary in the future, it has no relevance as to whether the couple met during the period applicable to this petition, which was between June 4, 2010 and June 4, 2012.

*Conclusion*

The statutorily required personal meeting between the petitioner and the beneficiary did not occur during the requisite time period and the petitioner is not exempt from such a requirement. Consequently, the beneficiary may not benefit from the instant petition and it must remain denied. The appeal is, therefore, dismissed. As stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition now that the petitioner and the beneficiary have met in person. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed. The petition remains denied.