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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
WAC 05 047 50060

Office: CALIFORNIA SERVICE CENTER Date:

JAN 18 2006

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, Director
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 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 date of filing the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated April 21, 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 at section 214.2 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 December 2, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on December 2, 2002 and ended on December 2, 2004.

At the time of filing, the petitioner indicated that he had initially met the beneficiary on February 21, 2003, but provided no documentation to support his claim. In response to the director's request for evidence, the petitioner submitted hand dated photographs of himself and the beneficiary during 2003 and 2004. On appeal, the petitioner again references the photographs and notes that they clearly indicate that time has passed since he and the beneficiary first met.

The AAO does not find the photographs submitted by the petitioner to establish that the petitioner has complied with the meeting requirement of section 214(d) of the Act. As noted in the director's denial, the photographs are not film dated. Accordingly, they cannot be used to prove that the petitioner and beneficiary were together during the specified period of December 2, 2002 to December 2, 2004. The petitioner's hand dating of the photographs is insufficient to establish the time period in which they were taken. Therefore, the petitioner has not proven that he has complied with the meeting requirement of section 214(d) of the Act and the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. If the petitioner can document a meeting with the beneficiary, 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 AAO notes that, on appeal, the petitioner indicates that he plans to marry the beneficiary in November 2005. In the event that the petitioner and the beneficiary are now married, the petitioner may still file a new Form I-129F on the beneficiary's behalf. However, for the spouse of a U.S. citizen to benefit from a Form I-129F petition, that spouse must also be the beneficiary of a petition to accord status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, i.e., the spouse must also be the beneficiary of a Form I-130 immigrant visa petition. If the petitioner and beneficiary are married and he wishes to file a new Form I-129F, he must, at the time of filing, submit proof that he has already filed a Form I-130 for the beneficiary.

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.