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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 16 2005

EAC 03 175 53157

IN RE: Petitioner: [redacted]
Beneficiary

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 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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Nigeria, 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 petitioner and the beneficiary had not personally met within the two years immediately preceding the date of filing of the petition, as required by section 214(d) of the Act. *Decision of the Director,* dated July 20, 2004.

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 May 19, 2003. The AAO notes that the director's denial indicated that the date of filing was November 22, 2003, and specified that the two-year period within which the petitioner was to have met the beneficiary began on December 22, 2001 and ended on December 22, 2003. These dates are not, however, accurate. The Form I-129F in the instant case was filed on May 19, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 19, 2001 and ended on May 19, 2003

At the time of filing, the petitioner indicated that he had previously met the beneficiary, but did not state whether any meeting(s) had occurred during the two years immediately preceding the filing of the Form I-129. In response to the director's request for evidence, the petitioner submitted copies of pages from his previously-held Nigerian passport, one of which shows a Nigerian departure stamp from 1995. Therefore, the evidence of record does not establish that the petitioner has complied with the meeting requirement found at section 214(d) of the Act, 8 U.S.C. § 1184(d).

On appeal, the petitioner asserts that his busy work schedule prevented him from traveling to Nigeria between 2001-2003, but that he was able to do so in June 2004. He supports this statement with a November 29, 2003 letter from his employer who states that the petitioner, although entitled to three weeks of leave annually, has not been given more than one week's vacation during the preceding four years. The employer indicates that in 2003 the petitioner requested four weeks of leave to visit the beneficiary, but that his request was denied because of staff shortages. However, the petitioner's trip to Nigeria in June 2004 does not fall within the two-year period immediately preceding his filing of the Form I-129F -- May 19, 2001 - May 19, 2003 -- and, therefore, does not satisfy the requirement of section 214(d) of the Act.

The record also fails to establish the petitioner's eligibility for an exemption under 8 C.F.R. § 214.2(k)(2). The constraints imposed by his employment do not establish that complying with the meeting requirement of section 214(d) of the Act would have resulted in extreme hardship for him. Finding the time to travel to a foreign country is a common challenge faced by many individuals who file Form I-129s. Further, the AAO notes that, while the statute requires the petitioner and beneficiary to meet, it does not stipulate that this meeting occur in the beneficiary's home country. There is, however, no evidence in the record to indicate that the petitioner and beneficiary explored options for a meeting beyond the petitioner traveling to Nigeria, including, but not limited to the beneficiary traveling to meet the petitioner in the United States or a country bordering the United States.

Taking into account the totality of the circumstances, as presented by the petitioner, the AAO does not find that compliance with the meeting requirement would have resulted in extreme hardship to the petitioner or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, as required for an exemption from the meeting requirement at 8 C.F.R. § 214.2(k)(2). Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. The petitioner may file a new I-129F petition in the beneficiary's behalf so that a new two-year period in which the parties are required to have met 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.