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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 18 2006
WAC 05 124 50538

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 South Africa, 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).

The director denied the petition after determining that the record did not establish that the petitioner and beneficiary had personally met within the two-year period immediately preceding the date of filing of the petition, as required by section 214(d) of the Act. *Decision of the Director*, dated July 6, 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 March 21, 2005. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 21, 2003 and ended on March 21, 2005.

At the time of filing, the petitioner indicated that she and the beneficiary had previously met and submitted a notarized letter from a friend who stated that the petitioner met the beneficiary in the United States in October 2000. The petitioner also provided copies of travel reservations for the beneficiary and herself for an April 2005 reunion in London.

In response to the director's request for evidence, the petitioner submitted a copy of the beneficiary's expired and current Florida driver's licenses, a lease agreement showing that she and the individual who provided the notarized letter at the time of filing were joint tenants of the same property from June 1, 2002 to May 31, 2002, copies of pages from the beneficiary's passport showing May 1994 and May 1995 admissions to the United States and a multiple-entry U.S. visitor's visa issued in April 1994, and a copy of an undated photograph of the petitioner and beneficiary. On appeal, the petitioner submits a second undated photograph of herself and the beneficiary, and another notarized statement attesting to the petitioner's meeting with the beneficiary in October 2000. This evidence, however, is insufficient to establish the petitioner's compliance with the meeting requirement of section 214(d) of the Act.

The documentation submitted by the petitioner does not respond to the requirement that the petitioner prove she and the beneficiary met between March 21, 2003 and March 21, 2005. The copies of the beneficiary's Florida driver's licenses and his passport establish only that he was in the United States for some period of time after May 1994. The photographs, even though they are proof of meetings between the petitioner and the beneficiary, are undated and, therefore, do not establish that these meetings occurred during the specified period, as required by section 214(d) of the Act. The second notarized letter, submitted by the petitioner on appeal, indicates that the petitioner met the beneficiary in October 2000, not that they met during the two years preceding the filing of the Form I-129F.

The AAO notes that the notarized letter submitted at the time of filing indicates that the petitioner knew the beneficiary from October 2000 until his departure from the United States in May 2003. However, while the writer specifically states that the petitioner and beneficiary met in October 2000, he does not attest to any meetings between the petitioner and beneficiary from March 21, 2003 to May 2003, the length of time the beneficiary's stay in the United States and the specified meeting period overlapped. He indicates only that, since the beneficiary's departure from the United States, he and the petitioner have continued to stay in contact via email, instant messenger and telephone. Therefore, while the letter establishes that the petitioner and beneficiary knew one another, it is not proof of a meeting during the specified period. The AAO also notes that during this time period, the writer of the letter and the petitioner were no longer residing at the same residence, as was the case at the time the petitioner and beneficiary met. Accordingly, the petitioner has

not proven that she has complied with the meeting requirement of section 214(d) of the Act. Further, there is no evidence in the file to indicate that such a meeting would have imposed an extreme hardship on her or that it would have violated the customs of the beneficiary's culture or social practice. Therefore, 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 and beneficiary met in London in April 2005, she may file a new I-129F petition on the beneficiary's behalf so that a new two-year meeting period 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.