U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

D6

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 13 2006

EAC 05 050 51470

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 Director, Vermont 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 India, 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 petitioner had failed to establish that she was legally free to marry the beneficiary, and that she 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 26, 2005.

On appeal, the petitioner submits final divorce decrees for her previous marriages. Therefore, she has established that, at the time of filing, she was legally able to enter into a marriage with the beneficiary. The only issue before the AAO is, therefore, whether the petitioner may be exempted from the meeting requirement of section 214(d) of the Act.

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 language of 8 C.F.R. § 214.2(k)(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 10, 2004. Therefore, the petitioner and the beneficiary were required, by law, to have met during the period that began on December 10, 2002 and ended on December 10, 2004.

At the time of filing, the petitioner indicated that she had not personally met the beneficiary, although they have talked over a web cam. She stated that if she were to travel to India to meet the beneficiary it would jeopardize her employment. The petitioner also noted that her parental responsibilities and her role as the president of her nurses union required her presence. In response to the director's request for evidence, the petitioner provided letters from the health and human services department for which she works attesting to her employment and that it would be an extreme hardship to lose her services. She also submitted a letter from an attorney describing her role in union litigation and stating that such litigation could not proceed without her. The attorney further stated that it would be inadvisable for the petitioner to be absent for an extended period.

On appeal, the petitioner again points to her parental obligations, noting that her daughter suffers from seizures and that it would be personally devastating if she were to become ill while the petitioner was away.

The petitioner seeks to be exempted from the meeting requirement, citing a range of reasons – her employment obligations, her parental responsibilities and her role in ongoing litigation involving her union. However, these personal commitments do not establish that complying with the meeting requirement would have constituted an extreme hardship for the petitioner, as required for an exemption from the meeting requirement.

Obligations involving employment and family are concerns for many individuals who plan to travel overseas before filing Form I-129Fs and do not, therefore, constitute extreme hardship. Further, while section 214(d) of the Act stipulates that the petitioner and beneficiary meet during the two-year period immediately preceding the filing of the Form I-129F, it does not require the petitioner to travel to the beneficiary's home country. The record on appeal, however, does not demonstrate that the petitioner and the beneficiary explored options for a meeting beyond the petitioner traveling to India, including the beneficiary traveling to meet the petitioner in the United States or a bordering country. 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 her or would have violated any strict and long-established customs of the beneficiary's foreign culture or social practice, the circumstances that exempt a petitioner from the meeting requirement of section 214(d) of the Act. 8 C.F.R. § 214.2(k)(2). Accordingly, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Should the petitioner and beneficiary meet, she may submit another Form I-129F on 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.