



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted] Office: Nebraska Service Center
LIN 99 217 53003

Date: AUG 16 2000

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

APPLICATION: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of [REDACTED] 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 not established that: (1) he and the beneficiary personally met within two years prior to the date of filing the petition; (2) unique circumstances exist which prevent his meeting with the beneficiary; or that (3) compliance with the requirement would result in extreme hardship to himself.

On appeal, the petitioner asserts that on December 11, 1980, he received severe back problems from a work-related accident and he was placed on 100% disability. He claims that he had five major back surgeries, the latest on May 14, 1999, and he was advised by his doctor that he would not be able to make a trip of that distance.

Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category 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 admission, and the minor children of such fiancée or fiancé accompanying him or following to join him.

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 2 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 Attorney General in his discretion may waive the requirement that the parties have previously met in person....

8 C.F.R. 214.2(k)(2) provides that, as a matter of discretion, the director may exempt the petitioner from the requirement that the

parties have previously met 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 petition was filed with the Service on July 8, 1999. Therefore, the petitioner and the beneficiary must have met in person between July 7, 1997 and July 8, 1999.

The petitioner indicates on the Form I-129F petition that he and the beneficiary have not personally met. He states that he was unable to make the trip due to his health. He submits a letter from his physician stating:

The above named patient had back surgery on May 14, 1999. Although he is slowly improving, he also has meralgia paresthetica and continues to have pain, especially when sitting for long periods of time.

[The petitioner] would not be able to tolerate a trip to [REDACTED] for a very long period of time, perhaps never....

Based on this information, the petitioner has established that compliance of the requirement would result in extreme hardship to himself and, therefore, warrants a favorable exercise of discretion to waive the requirement pursuant to section 214(d) of the Act and 8 C.F.R. 214.2(k)(2).

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 met that burden. Accordingly, the director's decision will be withdrawn, and the petition will be approved.

ORDER: The director's decision is withdrawn. The petition is approved.