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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

FILE: [redacted] Office: Nebraska Service Center Date: SEP 25 2000
LIN 00 079 52622

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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 dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ukraine, as the fiance 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 he and the beneficiary personally met within two years prior to the date of filing the petition, nor had he established that unique circumstances exist which prevent the meeting, or that compliance with the requirement would result in extreme hardship to himself.

On appeal, counsel asserts that it would be an extreme hardship for the petitioner and the beneficiary to meet because the petitioner has a fear of flying, and it is unrealistic and not in good faith for the Service to suggest that the beneficiary should go to a neighboring country to visit the petitioner. Counsel further asserts that the beneficiary is currently trying to obtain a temporary visa for either Canada or Mexico. He states that the beneficiary's poverty level wages, however, will not financially allow her to go on a very expensive trip, and even more difficult because of her two young children. He claims that the beneficiary has previously attempted to secure a temporary B-2 visa in Kiev, but was denied. Counsel requests an additional 90 days in which to submit a brief and/or evidence. However, it has been well over six months since the filing of the appeal and no additional evidence has been provided.

Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category as:

> An alien who is the fiancee or fiance 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 fiancee or fiance 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 fiance(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 January 19, 2000. The petitioner claimed in a statement dated January 8, 2000, that he and the beneficiary have not personally met because he has a fear of flying in an airplane. He submits a letter from a psychologist to support his claim.

The director, however, determined that the petitioner's fear of flying did not preclude him from meeting the beneficiary in a bordering country of the United States, such as Mexico or Canada; therefore, compliance with the requirement would not constitute extreme hardship.

While counsel claims that the beneficiary has previously been denied a B-2 visa in Kiev, no evidence is furnished to corroborate his claim. Further, financial hardship and making the necessary arrangements required for compliance with the statutory requirement are normal circumstances and do not constitute extreme hardship.

The petitioner has failed to establish that he and the beneficiary have met personally as required, pursuant to section 214(d) of the Act. Nor has the petitioner established that he warrants a discretionary waiver of the requirement pursuant to 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 not met that burden. Accordingly, the appeal will be dismissed.

This decision, however, is without prejudice to the filing of a new petition (Form I-129F) once the petitioner and the beneficiary have met in person.

ORDER: The appeal is dismissed.