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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] **Public Copy**

File: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **MAR 30 2001**

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

Petition: 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

Identifying data removed 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


for Robert P. Wiemann, Acting 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 of the USSR and a citizen of Belarus, as the fiance(e) 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 and the beneficiary had not previously met in person, as required by section 214(d) of the Act. In reaching this conclusion, the director found that the petitioner's failure to comply with the statutory requirement was not the result of extreme hardship to the petitioner, or unique circumstances.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiance(e)" 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 entry....

Section 214(d) of the Act, 8 U.S.C. 1184(d) states in pertinent part that a fiancée 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 bonafide 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...

The petition was filed with the Service on March 27, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 27, 1998 and ended on March 27, 2000.

On the Petition for Alien Fiance(e) (Form I-129F), the petitioner specified that he and beneficiary had not personally met, but they had corresponded. The director requested that the petitioner submit additional information regarding why he and the beneficiary had never met. The beneficiary responded to the director, stating that she was unable to afford the cost of an airline ticket, could not obtain a U.S. visa, and her culture precluded her from inviting the petitioner to Belarus. Citing that the petitioner and the beneficiary had not met within the required two-year period, the

director denied the petition.

On appeal, the petitioner stresses that as a veteran and a current member of the U.S. armed forces, he should be able to marry anyone he chooses. The petitioner further states that "[a]ny idiot who served in the armed forces knows that he cannot just go to another country without permission. That is why we never met in person. Because our country's [sic] would not allow it."

Pursuant to 8 C.F.R. 214.2(k)(2), a district director may exercise discretion and waive the requirement of a personal meeting between the two parties if it is established that compliance would:

- (1) Result in extreme hardship to the petitioner; or
- (2) Violate strict and long-established customs of the beneficiary's foreign culture or social practice.

Subsequent to the filing of the appeal, the petitioner submitted photocopies of photographs that showed him with the beneficiary and the beneficiary's daughter. The petitioner also attached a letter from the Consul at the U.S. Embassy in Poland, who verified that the petitioner and the beneficiary appeared before him in person. Such evidence establishes that it is obviously not a hardship for the petitioner to meet the beneficiary or that the beneficiary's culture prohibits her from meeting the petitioner.

Section 214(d) of the Act specifically requires the petitioner to prove that he and the beneficiary had met in person in the two-year period before filing the petition. In the instant case, the relevant two-year period is March 27, 1998 to March 27, 2000. According to evidence the petitioner submitted subsequent to the appeal, the petitioner and beneficiary met in November of 2000, nearly 9 months after the filing of the petition.

The Service agrees with the petitioner that he has the right to marry whomever he chooses, and the Service cannot, and would not, prevent the petitioner from marrying the beneficiary. In this proceeding, the Service has simply determined that the petitioner did not comply with the law in that he and the beneficiary did not meet during the two-year period before the filing of the instant I-129F petition. Now that the petitioner and the beneficiary have met in-person, the petitioner may file a new I-129F petition in the beneficiary's behalf, as the denial of the instant petition is without prejudice.

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.