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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

AUG 08 2003

FILE: LIN 02 237 52339 [redacted] Office: Nebraska Service Center Date:

IN RE: Petitioner:
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

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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 Colombia, 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. § 101(a)(15)(K).

The director noted that the evidence submitted indicated that at the time of filing the petition, more than two years had elapsed since the time the petitioner and the beneficiary personally met. He determined that no evidence was submitted to establish that unique circumstances exist that prevent the meeting of the petitioner and the beneficiary or that compliance with this requirement would cause extreme hardship to the petitioner. The director further determined that the Service could find no facts in this instance that warrant a discretionary waiver of the two-year meeting period. He, therefore, denied the petition.

On appeal, the petitioner states that even though she and the beneficiary have not seen each other in less than two years, they communicate by telephone at least four times weekly. She further states that the main reason for not seeing the beneficiary is because she does not want to go to Colombia at the present time due to the horrible social conditions in her former country, and that the U.S. State Department had recently advised all U.S. citizens not to travel to Colombia.

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 July 17, 2002. Therefore, the petitioner and the beneficiary must have met in person between July 18, 2000 and July 17, 2002.

The petitioner states that she had not seen the beneficiary in less than two years prior to the filing of the petition. The petitioner further states that she does not want to go to Colombia at the present time due to the horrible social conditions, and due to the U.S. State Department's recent travel advisement. She explains that the beneficiary's cousin went to Colombia on vacation from Canada, he was sequestered, and he is still in the hands of the guerrilla group. She describes incidents where other people have fallen into the hands of the guerrilla group in Colombia. The petitioner, however, has not established that she is likely to be the specific target of crime in Colombia. The petitioner also claims that the beneficiary went to the American Consul in Bogota to request a visitor's visa in order to come to the United States to get married, however, the consulate denied the request. There is nothing in the law that requires that they meet in his country of residence. The petitioner has given no indication that she and the beneficiary have tried to meet in a third country.

The petitioner has not established that she and the beneficiary met within the required period, pursuant to section 214(d) of the Act. Nor has the petitioner established that she 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 is without prejudice to the filing of a new petition (Form I-129F) once the petitioner and the beneficiary have met in person, and within the two years of the date of filing the new petition.

ORDER: The appeal is dismissed.