U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

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Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: Vermont Service Center
(EAC 03 045 51226 relates)

Date: AUG 19 2005

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: [redacted]

PUBLIC COPY

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 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, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is citizen of the United States who seeks to classify the beneficiary, a native and citizen of the Colombia, 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 and the beneficiary had not personally met within two years before the date of filing the petition, 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 Act defines "fiancé(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 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. . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with the Bureau on November 22, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 22, 2000 and ended on November 22, 2002.

In response to Question #19 on the Form I-129F, the petitioner indicated that he and the beneficiary had never personally met. In a letter dated October 16, 2002, the petitioner explained his reasons for not having met the beneficiary as follows:

> . . . I have been hesitant to visit Colombia as I have read travel warnings regarding the kidnapping of United States citizens, posted on the Department of Justice Web Site. And as I own my own business, taking any time away

is difficult. . . .

On appeal, counsel for the petitioner submits a letter from a licensed psychologist indicating that the petitioner suffers from Panic Disorder with Agorophobia, and is therefore unable to travel to Colombia to meet the beneficiary. Counsel asserts that the petitioner did not advise counsel of these medical conditions earlier due to embarrassment. Counsel also indicates that the beneficiary has a request pending with Canadian authorities for a visa in order to meet the petitioner in Montreal, Canada. Counsel states that since it is not guaranteed that the beneficiary will be able to obtain a Canadian visa, the petitioner seeks to proceed with his request for a waiver of the in-person meeting requirement.

Pursuant to 8 C.F.R. § 214.2(k)(2), a 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.

The regulation at 8 C.F.R. § 214.2(k)(2) does not define what may constitute extreme hardship to a 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.

In the instant case, the petitioner's reasons for not having personally met the beneficiary are inconsistent and are not persuasive. As the petitioner is evidently aware, there is no requirement that the parties meet in Colombia. In addition, no evidence has been submitted to establish when the beneficiary made her request for a visa to visit Canada and whether or not that request has been adjudicated.

The petitioner has failed to establish that he and the beneficiary have personally met within the time period specified in section 214(d) of the Act, or that extreme hardship or unique circumstances exist to qualify him for a waiver of the statutory requirement. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R § 214.2(k)(2), the denial of this petition is without prejudice. If the petitioner and the beneficiary meet in person, the petitioner may file a new I-129F petition on behalf of the beneficiary in accordance with the statutory requirements. Without the submission of documentary evidence that clearly establishes that the petitioner and the beneficiary have met in person during the requisite two-year period, the petition may not be approved unless the director grants a waiver of that requirement.

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.