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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: Texas Service Center Date: AUG 19 2003
(SRC 02 263 50381 relates)

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

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Libya, 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.

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 admission.

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) on September 6, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on September 6, 2000 and ended on September 6, 2002.

With the initial filing of the petition, the petitioner stated in response to Question #19 on the Form I-129F that he and the beneficiary had last met in Libya in 1993. In support of the petition, the petitioner submitted copies of several pages from his U.S. passport. The copies show that the petitioner's passport was valid from February 10, 1993 through February 9, 2003, and that the only travel the petitioner has made was to Malta from July 24, 1993 through August 7, 1993.

In response to the director's request for additional information and evidence, the petitioner submitted a letter stating that he has corresponded with the beneficiary almost daily by telephone but could not again travel to meet her because his passport is not valid for travel to, in, or through Libya without obtaining a

special validation. In support, the petitioner submitted copies of a "Consular Information Sheet - Libya" and a "Libya - Travel Warning," issued by the U.S. Department of State in October 2002.

On appeal, counsel asserts that the director erred in not considering the reasons indicated for lack of the parties' face-to-face contact in the last two years. Counsel argues that U.S. Department of State travel warnings preclude the petitioner from traveling to meet the beneficiary and, that according to Islamic religion and culture, the parties are not required to meet and can only meet in the presence of family members. In support of the appeal, counsel submits the following additional documentation:

(1) a letter from the president of the East Texas Islamic Society stating that a man and a woman cannot meet individually (without the presence of other family members) prior to getting married;

(2) a video tape of the parties' engagement party;

(3) calling cards used by the petitioner to communicate with the beneficiary; and

(4) a letter from the petitioner's probation officer stating that the petitioner is serving a term of supervised release and is not allowed to travel outside of the United States.

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 § 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. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty. Examples of such circumstances may include, but are not limited to, serious medical conditions or hazards to U.S. citizens to travel to certain countries.

In the instant case, the petitioner has failed to establish that he warrants a favorable exercise of discretion to waive the statutory requirement. First, the petitioner's inability to travel outside of the United States, based on the fact that he is on parole, is a situation that is the result of his own actions which he had the

ability to control. It is also noted that the record contains no information as to the reason or duration of the petitioner's parole.

Second, while it is understandable that the petitioner is unable to travel to Libya to meet the beneficiary, he has failed to submit any credible documentary evidence as to why he and the beneficiary could not meet in a third country. It is noted that although the petitioner claims to have met the beneficiary in Libya in 1993, the evidence contained in the record indicates that he traveled only to Malta. If the petitioner did, in fact, travel to Libya in 1993, there is no evidence of that travel contained in the record and no explanation as to how circumstances preventing him from traveling to Libya now did not prevent him from traveling to that country in 1993. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho,* 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, there is no credible documentary evidence contained in the record to establish that a personal meeting within the required time period would violate strict and long-established customs of the beneficiary's foreign culture or social practice. The evidence presented merely reflects that the parties are not *required* to have met, and, that if they do meet, it must be in the presence of family members.

Pursuant to 8 C.F.R § 214.2(k)(2), the denial of this petition is without prejudice. If the petitioner and the beneficiary again meet in person, the petitioner may file a new I-129F petition on behalf of the beneficiary. The petitioner will be required to submit evidence that he and the beneficiary have met within the two-year period that immediately precedes the filing of a new petition. 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.