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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]

File: [redacted] Office: Texas Service Center Date: AUG 19 2003
(SRC 02 245 54057 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: 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 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 citizen of the United States who seeks to classify the beneficiary, a native and citizen of Uzbekistan, 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 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 Service on July 16, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 16, 2000 and ended on July 16, 2002.

In response to Question #19 on the Form I-129F, the petitioner indicated that he and the beneficiary had never personally met. The petitioner asserted that he is unable to travel to meet the beneficiary because he is a dialysis patient and that Uzbekistan does not have proper medical facilities for dialysis. He also provided a short note from a physician at the Texas City Dialysis, L.L.P. stating: ". . . [the petitioner] is unable to travel outside of the United States due to health problems which would endanger his well-being. . . ."

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.

On August 6, 2002, the director requested the petitioner to submit additional information and documentation concerning his failure to comply with the two-year meeting requirement. In response, the petitioner submitted documentation indicating that he traveled to Moscow to meet the beneficiary from September 19, 2002 through October 4, 2002.

It is important to emphasize that the regulation at section 214.2(k)(2) requires the petitioner to prove that he last met the beneficiary no more than two years *prior to* the filing date of the petition. In the instant case, the relevant two-year period is July 16, 2000 to July 16, 2002. The evidence submitted on appeal reflects that the petitioner visited the beneficiary in September 2002, two months *after* having filed the petition.

In his initial application, the petitioner requested a waiver of the requirement that he meet the beneficiary in person as he claimed he could not travel due to his medical condition. He subsequently did travel, thereby diminishing his claim and justifying the director's decision to deny the petition.

Although the petitioner and beneficiary have now met, the meeting did not occur within the relevant two-year period. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Now that the petitioner and the beneficiary have met, the petitioner may file a new I-129F petition on the beneficiary's behalf so that the two-year period in which the parties are required to have met will apply.

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.