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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date:
(EAC 01 211 51201 relates)

FEB 28 2003

IN RE: Petitioner:
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 deleted to prevent clearly unwarranted invasion of personal privacy

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 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. 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 Egypt, 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 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 "fiance(e)" 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 entry. . . .

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 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. . . . [emphasis added]

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on July 6, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 6, 1999 and ended on July 6, 2001.

In response to Question #19 on the Form I-129F, the petitioner indicated that he and the beneficiary had met. In response to the director's request for additional information and evidence concerning the parties' last meeting, the petitioner submitted a letter stating that visitation between him and the beneficiary had been impossible since February 1998 due to child custody arrangements that make it impossible for him to leave the United States.

The director determined that the petitioner's child custody arrangements were not rare or unusual circumstances and did not warrant a waiver of the two-year meeting requirement. The director noted that although the petitioner's travel abroad was restricted, no reasons were mentioned as to why the beneficiary could not travel to the United States.

On appeal, the petitioner states that the beneficiary has twice applied for a visa to visit the United States at the U.S. Consulate in Cairo, Egypt, but that she was refused visa issuance on both occasions. He further indicates that his child custody arrangements are not an excuse for not visiting the beneficiary, as he could travel during the days of the week that he does not have custody. The petitioner mentions that he has contemplated marrying the beneficiary overseas and then bringing her to the United States, but that it would be best if the beneficiary came for a visit first because she may not like his life in 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.

In the instant case, the petitioner has failed to establish that he warrants a favorable exercise of discretion to grant a waiver the two-year meeting requirement. By the petitioner's own admission, his child custody arrangements are not an excuse and he could travel to meet the beneficiary on the days he does not have custody of his child.

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 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. Once the petitioner and beneficiary again meet, the petitioner may file a new I-129F petition in the beneficiary's behalf so that the two-year period in which the parties are required to have met will apply. It should be noted that in the event that the petitioner and beneficiary lawfully marry during the petitioner's visit abroad, the petitioner should alternatively file a Petition for Alien Relative (Form I-130) on behalf of his wife in accordance with the regulations and instructions regarding such petitions.

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.