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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: VERMONT SERVICE CENTER Date: 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

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 Sierra Leone, 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. . . .

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on July 3, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 3, 1999 and ended on July 3, 2001.

In response to Question #19 on the Form I-129F, the petitioner indicated that she and the beneficiary had personally met. In response to the director's request for additional information and evidence concerning the parties' last meeting, the petitioner resubmitted a letter dated May 2001 explaining how she met the beneficiary. She also submitted several affidavits from relatives affirming that she and the beneficiary had met. However, the information and documentation submitted did not establish that the parties had met during the requisite two-year period immediately preceding the filing date of the petition.

On appeal, the petitioner submits a letter explaining that she and the beneficiary met more than two years prior to the filing date of the petition, that they have had a relationship since high school, and that they have a daughter together. She states that she intended to travel to Sierra Leone in the late 1990's but was prevented from doing so by the outbreak of civil war in that country. She states that because of the civil war, the beneficiary lost everything he owned, was forced to leave the country for a while, and that the couple temporarily lost contact. She indicates that her parents have given their approval for her to arrange for the beneficiary to join her United States and asks that the petition be granted in order that the beneficiary can participate in their daughter's upbringing.

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 section 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 reasons given by the petitioner for not having met the beneficiary within two years prior to filing the petition do not support a finding that compliance with the requirement would cause extreme hardship to the petitioner. The temporary loss of contact with one another does not constitute extreme hardship. Furthermore, the petitioner has failed to submit credible documentary evidence that travel to Sierra Leone was precluded during the requisite time period and, if so, she has not established why she could not travel to a third country to meet the beneficiary.

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.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of the petition is without prejudice. Once the petitioner and the beneficiary have met again in person, 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. The petitioner should submit evidence that she 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 such 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.