



U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: WAC 01 222 55399

Office: California Service Center

Date: SEP 17 2002

IN RE: Petitioner:
Beneficiary:



APPLICATION: 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

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 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. 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 Nigeria, as the fiance 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 had not established that she and the beneficiary personally met within two years prior to the date of filing the petition. He further determined that the evidence of record did not warrant a grant waiving the meeting requirement.

On appeal, the petitioner states that she suffers acute anxiety attacks while flying and she has sought medical attention for this disorder with Doctor Verretta Deorosan. She further states that it is extremely difficult to state how long this disorder will last or whether she will ever recover, and that she also has a financial hardship with regards to the travel expenses involved with a visit to Nigeria.

Section 101(a) (15) (K) of the Act defines a nonimmigrant in this category as:

An alien who is the fiancée 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 admission, and the minor children of such fiancée or fiance accompanying him or following to join him.

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 2 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, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person....

8 C.F.R. 214.2(k) (2) provides that as a matter of discretion, the director may exempt the petitioner from the requirement that the

parties have previously met only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

The petition was filed with the Service on June 26, 2001. Therefore, the petitioner and the beneficiary must have met in person between June 26, 1999 and June 26, 2001.

The petitioner claims that she and the beneficiary have not personally met because she has anxiety attacks when flying in an airplane and that she also has a financial hardship with regards to travel expenses. She submits a letter from Dr. Deorosan, Internal Medicine, to support her claim. Dr. Deorosan states that the petitioner will require medication and/or psychological counseling to treat her anxiety.

No documentation was furnished to establish that the petitioner is receiving medication and/or psychological counseling. Furthermore, the petitioner's fear of flying does not preclude her from meeting the beneficiary in a bordering country of the United States, such as Mexico or Canada; therefore, her claimed inability to comply with the requirement does not constitute extreme hardship. Further, financial difficulties and completing the necessary arrangements for compliance with the statutory requirement are normal circumstances and do not constitute extreme hardship.

The petitioner has failed to establish that she and the beneficiary have met personally as required, pursuant to section 214(d) of the Act. Nor has the petitioner established that she warrants a discretionary waiver of the requirement pursuant to 8 C.F.R. 214.2(k)(2).

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. Accordingly, the appeal will be dismissed.

This decision, however, is without prejudice to the filing of a new petition (Form I-129F) once the petitioner and the beneficiary have met in person, and within the two years of the date of filing the new petition.

ORDER: The appeal is dismissed.