



U.S. Department of Justice
Immigration and Naturalization Service

Do

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



PUBLIC COPY

FEB 21 2001

File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
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)

identification card deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:
SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on motion. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Russia, as the fiancé(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 Associate Commissioner dismissed the appeal after determining that the petitioner and the beneficiary had not previously met in person, as required by section 214(d) of the Act, and that the petitioner's failure to comply with the statutory requirement was not the result of extreme hardship to the petitioner, or unique circumstances. The petitioner had claimed that he is unable to travel to Russia to meet the beneficiary because he must care for his ailing mother and, as a sole proprietor, it would be financially debilitating for him to shut down his business for travel to Russia.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), 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 fiancée 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 bonafide 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...

On motion, the petitioner submits a letter in which he details the types of services he provides to his ailing mother, which include taking her grocery shopping, taking her to doctors' appointments, picking-up her medicine, giving her massages as needed, and being available for any emergencies. The petitioner also submits a letter from his mother's physician who states that the petitioner's mother has severe osteoporosis and multiple vertebral compression fractures. According to the physician, he strongly recommends that

the beneficiary remain in Hawaii to care for the petitioner's mother.

Pursuant to 8 C.F.R. 214.2(k)(2), a district 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 evidence that the petitioner submits on motion does not persuade the Associate Commissioner to reverse his prior decision. The types of services that the petitioner provides to his mother, such as grocery shopping and picking-up medications, are services that the petitioner could pay a visiting nurse or other professionals to perform while the petitioner is away meeting the beneficiary. The petitioner has not persuasively established that travel to Russia to meet the beneficiary would be an extreme hardship to him, despite that he is a caregiver for his mother. Caregiving services on a temporary basis can be contracted by the petitioner.

The petitioner has failed to establish that he and the beneficiary have personally met as required by section 214(d) of the Act, and that extreme hardship or unique circumstances qualify him for a waiver of the statutory requirement. Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice, and the petitioner may file a new I-129F petition after he and the beneficiary have met in person.

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 prior decision of the Associate Commissioner, dated July 31, 2000, is affirmed.