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U.S. Department of Justice

Immigration and Naturalization Service

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



File: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 21 2001

IN RE: Petitioner:
Beneficiary:



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)

Public Copy

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 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

Myra L. Rosenbey
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Eritrea, 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 met in person within two years of the filing date of 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. The petitioner had claimed that she is unable to travel to Eritrea to meet the beneficiary due to the civil war and because her family in Eritrea relies upon her wages as a full-time employee.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiance(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...[emphasis added]

The Petition for Alien Fiance(e) (Form I-129F) was filed with the Service on September 3, 1999. Therefore, the petitioner and the beneficiary were required to have met during the period that began on September 3, 1997 and ended on September 3, 1999.

The record reflects that the petitioner and the beneficiary knew each other when both were living in Ethiopia, but they have not seen each other since the petitioner left Ethiopia in 1991. According to the petitioner, members of her family and the

beneficiary entered into a wedding pact for her marriage to the beneficiary in approximately May of 1998, as she was unable to travel to Ethiopia due to the death of her younger sister. The petitioner submits photographs that she claims shows her family meeting with the beneficiary to arrange her and the beneficiary's marriage, as required by Ethiopian custom. The petitioner also claims that she cannot travel to meet the beneficiary due to a civil war between Ethiopia and Eritrea, and that the beneficiary and other Ethiopians of Eritrean descent including her immediate family members, were forcibly deported to Eritrea after May 1998. Citing that no extreme hardship or unique circumstances existed to warrant a waiver of the requirement to meet in person within the proscribed time period, the director denied the petition.

On appeal, the petitioner reiterates that was unable to travel to either Ethiopia or Eritrea during the period of time in question due to the civil war. She also states that she is attending nursing school and working full-time in order to support her family in Eritrea and, for this reason, does not have the necessary finances for a trip abroad.

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 record contains sufficient evidence that a personal meeting between the petitioner and the beneficiary would result in extreme hardship to the petitioner. Records of the Immigration and Naturalization Service (INS) show that the petitioner was recognized as a refugee. Section 101(a)(42) of the Act, states that a refugee is a person who is unable or unwilling to return to his country of nationality or last habitual because of persecution or a well-founded fear of persecution on account of a protected ground.

Considering that the petitioner was recognized as a refugee from Ethiopia, it would have been an extreme hardship for her to return to that country during the September 3, 1997 through September 3, 1999 period in question in order to meet the beneficiary. Although the statute does not require the petitioner to travel to Ethiopia in order to meet the beneficiary, country conditions information indicates that the civil strife between Ethiopia and Eritrea at that time, particularly for Ethiopians of Eritrean descent, would have made travel for the beneficiary unreasonable. This is particularly apparent considering that the beneficiary and members of the petitioner's family were forcibly deported from Ethiopia to

Eritrea. Accordingly, the requirement of a personal meeting between the petitioner and the beneficiary will be waived by the Service in this particular case as a matter of discretion.

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 met that burden.

ORDER: The appeal is dismissed.