



06

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

[Redacted]

File: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 21 2001

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)

identifying information related to
prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER:

[Redacted]

Public Copy

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 the matter 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 India, 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 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 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 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 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 December 28, 1998. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 28, 1996 and ended on December 28, 1998.

The record reflects that the petitioner and the beneficiary met in person in January 1996 during the petitioner's last visit to India. In denying the petition, the director found that the personal meeting between the petitioner and the beneficiary, which occurred prior to December 28, 1996, was not within the two-year period prescribed by the statute and that no reasons were presented to waive this requirement. Accordingly, the petition was denied.

On appeal, counsel states that "the letter of the law is in conflict with the intent of the law, which is to provide an assurance that the parties involved have actually met." Counsel further contends that the petitioner, who is a widow with three young children, cannot travel to India because such travel would involve taking leave from work and would be prohibitively expensive.

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.

Counsel's arguments on appeal are not persuasive. First, counsel's argument regarding the intent of the law versus the "letter of the law" does not have merit. Section 214(d) of the Act, which was enacted by Congress, specifically requires an in person meeting between the petitioner and the beneficiary during a specified time period. The Service cannot ignore the provisions of the governing statute simply because counsel does not believe that it expresses the intent of Congress.

Second, counsel's claim regarding the beneficiary's hardship in traveling to India is not compelling considering that the petitioner previously traveled to India in January 1996 for a wedding, and neither counsel nor the petitioner has shown why that trip was not a hardship to the petitioner but a return trip to India during the December 1996 through December 1998 time period would have resulted in extreme hardship.

Although the petitioner and the beneficiary have met in person, they did not meet within two years before the date of filing the petition, and the petitioner failed to establish to the Service's satisfaction that extreme hardship or unique circumstances qualify her 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 to the filing of another I-129F in the future.

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.