

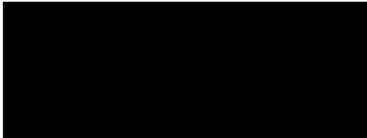


U.S. Department of Justice

Immigration and Naturalization Service

D6

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



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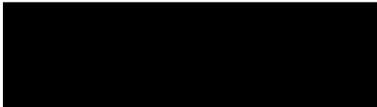


Office: VERMONT SERVICE CENTER

Date:

15 NOV 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)

Identifying data 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

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the nonimmigrant visa petition, 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 Haiti, 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 previously met in person 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.

8 C.F.R. 214.2(k)(2) states, in pertinent part:

Requirement that petitioner and beneficiary have met.
The petitioner shall establish to the satisfaction of the director that **the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition.** [emphasis added]

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on March 5, 2001. Therefore, the two year period immediately preceding the filing of the petition is March 5, 1999 through March 5, 2001. The petitioner has the burden of proving that he met the beneficiary in person sometime during this period of time.

In response to the director's request for additional information about the last meeting between the petitioner and the beneficiary, the petitioner stated that he last saw the beneficiary in person in 1997. The petitioner also submitted a joint affidavit from his parents, who stated that the marriage between the petitioner and the beneficiary was arranged between them and the beneficiary's parents. Citing that no extreme hardship or unique circumstances existed to waive the requirement of an in person meeting between the petitioner and the beneficiary, the director denied the petition.

On appeal, the petitioner states that he cannot travel to Haiti because he works during the day and attends law school at night. The petitioner further states that he is unable to leave his parents who are elderly.

Section 214(d) of the Act specifically requires the petitioner to prove that he and the beneficiary had met in person within two years before the date of filing the petition. In the instant case, the relevant two-year period is March 5, 1999 through March 5, 2001. According to evidence in the record, the petitioner and

the beneficiary last met in November of 1997, approximately 16 months prior to the relevant two-year period. The petitioner, however, requests a waiver of the requirement to meet the beneficiary in person within the required time frame. The petitioner's request is based upon his inability to take any vacation time away from his job, his studies and his parents.

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 with the regulation 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, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day.

The regulation 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.

The petitioner's stated reason for needing a waiver is not persuasive. The petitioner has not demonstrated that even a short trip to Haiti or to a third country would so adversely impact his employment, studies, and his parents that having to travel would result in extreme hardship to him. The Service notes the financial difficulties that may arise in arranging travel outside of the United States and the time commitment that travel may require; nevertheless, these are obstacles that are not insurmountable and must be undertaken in order to meet the requirement in the statute that calls for an in person meeting between the petitioner and the beneficiary during a proscribed period of time. Accordingly, the director's decision to deny the petition has not been overcome.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. Accordingly, if the petitioner and the beneficiary meet again in person, the petitioner may file a new I-129F petition in the beneficiary's behalf so that a new two-year period in which the parties are required to meet will apply.

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.