

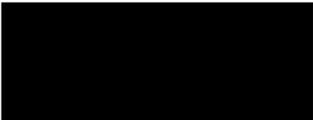


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U.S. Department of Justice

Immigration and Naturalization Service

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



File: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date: NOV 20 2001

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

Public Copy

INSTRUCTIONS:

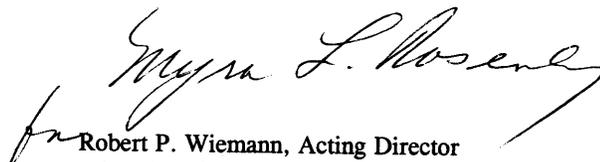
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 Director of the Nebraska 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 Columbia, 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 personally met within two years before the filing date of the petition as required by 8 C.F.R. 214.2(k)(2). In reaching this conclusion, the director found that the petitioner's failure to comply with the regulatory requirement was not the result of extreme hardship to the petitioner, or unique circumstances.

On appeal, the petitioner submits a statement. The petitioner also submits a letter from his parole officer and letters from friends and family who discuss the relationship between the petitioner and the beneficiary.

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....

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) on December 7, 2000. Therefore, the two year period immediately preceding the filing the petition is December 7, 1998 through December 7, 2000. The petitioner has the burden of proving that he met the beneficiary in person sometime during this period of time.

On the petition, the petitioner specified that he and the beneficiary had never met. The petitioner stated that he and the beneficiary became "pen pals" through a Christian pen-pal

magazine. The petitioner maintained that even though he and the beneficiary had never met, they had been writing and speaking on the telephone and were committed to marrying. The petitioner explained that his finances were limited and it would be a hardship for him to travel to Columbia to meet the beneficiary. Citing that extreme hardship did not qualify the petitioner for a waiver, the director denied the petition.

On appeal, the petitioner states that the beneficiary attempted to obtain a visitor's visa from the United States Consulate in Columbia, but her application was denied. The petitioner suggests that by requiring him to travel to Columbia to meet the beneficiary, the Service is asking him to break the law. In support of this statement, the petitioner submits a letter from his parole officer, who states that the petitioner is on parole for intimidating a witness and jumping bail. The parole officer further states that a condition of the petitioner's parole is that he not leave the United States anytime during his parole term, which will be completed in the year 2010.

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. In analyzing all of the evidence in the record, the petitioner has not shown that he is eligible for a favorable exercise of discretion.

As previously stated, the relevant two-year period that the Service is examining is the December 7, 1998 through December 7, 2000 period. The petitioner states that he cannot travel to Columbia because he is on parole; however, the letter from the petitioner's parole officer does not indicate that the petitioner had been on parole as early as December 7, 1998, the beginning of the relevant two-year period. Furthermore, in response to question #19 on the I-129F, the petitioner never claimed that he

was subject to parole in the state of Wisconsin; the petitioner's sole claim was that his financial situation prevented him from being able to travel. Thus, there is no evidence to show that the petitioner's inability to travel during the period of time in question was solely due to his need to comply with the terms of his parole.

Even if the petitioner had presented evidence that he was on parole as early as December 7, 1998, it would not be an adequate reason to waive the requirement of an in person meeting between him and the beneficiary.

Generally, when determining whether a meeting between a petitioner and beneficiary would result in extreme hardship to a petitioner, the director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty. Examples of such circumstances may include, but are not limited to, serious medical conditions or hazards to U.S. citizens of travel to certain countries.

In the instant case, the petitioner would have been unable to travel to Columbia because he was on parole for violating the laws of Wisconsin. This would have been a situation entirely within the petitioner to control, and a situation of limited duration (until the year 2010). For these reasons, the Service is not inclined to waive the requirement of a personal meeting between the petitioner and the beneficiary.

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 appeal is dismissed.