



DLB

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: VERMONT SERVICE CENTER

Date: OCT 04 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)

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
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 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 (1) the petitioner was not legally able to conclude a valid marriage, and (2) the petitioner and the beneficiary had not previously met in person within two years before the date of filing the petition as required by section 214(d) of the Act.

On appeal, counsel submits a brief.

Section 214(d) of the Act, 8 U.S.C. 1184(d) states in pertinent part that a fiancee 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...

I. DIVORCE OF THE PETITIONER

The director denied the petition in part, because the petitioner, who became legally divorced on March 27, 2000, was not free to conclude a valid marriage with the beneficiary on October 26, 1999, the date of the petition filing. On appeal, counsel states that the petitioner was unaware that he had to be legally divorced at the time the petition was filed, as the petitioner and his former spouse had been separated since 1994.

The petitioner has not overcome the director's objection on this issue.

8 C.F.R 103.2(b)(12) states:

Effect where evidence submitted in response to a request does not establish eligibility at the time of filing. An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility

at the time the petition was filed.

The record contains a copy of the petitioner's divorce decree, which states that the divorce between the two parties became final on March 27, 2000. The petitioner filed the instant I-129F petition on October 26, 1999, more than five months prior to the finality of his divorce. Although the petitioner's divorce had been final at the time the director made his decision, the petitioner did not meet the statutory requirement of being legally able to marry the beneficiary when he filed the petition.

II. MEETING OF THE PETITIONER AND THE BENEFICIARY PRIOR TO THE FILING OF THE PETITION

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) on October 26, 1999. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 26, 1997 and ended on October 26, 1999.

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 and the beneficiary had never met in person; however, the petitioner claimed that this arrangement was not an unusual practice in his culture. According to the petitioner, the beneficiary's sister, who lives in the United States, gave the petitioner a photograph of the beneficiary and the beneficiary's telephone number. As a meeting between the beneficiary and the petitioner had not occurred within two years prior to the filing date of the petition, and as no unique circumstances existed to waive this requirement, the director denied the petition.

On appeal, counsel states that it is customary in the petitioner's culture for an arranged marriage between two parties. Counsel submits a letter from the Imam of the Islamic Cultural Center in Newark, New Jersey, and a letter from the beneficiary's sister regarding the practice of arranged marriages in Islamic culture.

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 petitioner and the beneficiary have never met in person, so the petitioner is requesting a waiver of this requirement.

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 petitioner states that his cultural practice as a Muslim allows for an arranged marriage; however, merely stating that arranged marriages occur in one's culture is not sufficient. The petitioner must, but has failed to, address whether marriages in his and the beneficiary's culture are traditionally arranged by the parents of the contracting parties, whether the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day, and whether a meeting between him and the beneficiary during the two-year period would have violated such a cultural practice.

On appeal, counsel submits a letter from an Imam in Newark, New Jersey, who states that ". . . according to Islamic Jurisprudent [sic], two Muslims can be represented by agents in [a] marriage contract." This statement does not establish that marriages within the petitioner's culture are traditionally arranged, or whether a personal meeting between the petitioner and the beneficiary would violate such a cultural practice. The Imam solely states that arranged marriages are permitted, without providing any insight into the practices of arranged marriages within the petitioner's culture.

Counsel also submits a letter from the beneficiary's sister, who states that she arranged for the petitioner and the beneficiary to meet via telephone and, therefore, arranged their marriage. The beneficiary's sister also does not discuss whether a personal meeting between the petitioner and beneficiary is prohibited according to the beneficiary's cultural practices regarding arranged marriages. Moreover, the regulation cited above refers to arranged marriages that are traditionally arranged by the parents of the contracting parties [emphasis added]. According to the biographic information forms (Form G-325A) in the record, the parents of both the petitioner and the beneficiary are currently living in Eritrea. The petitioner fails to address why his marriage was not arranged by the parents as the regulation appears to require.

Accordingly, the director's decision to deny the petition is affirmed. Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice. Therefore, if the petitioner and the beneficiary meet 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.