

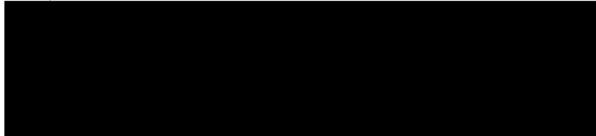


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U.S. Department of Justice
Immigration and Naturalization Service

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

Public Copy



File [redacted] Office: VERMONT SERVICE CENTER

Date: OCT 04 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)

IN BEHALF OF PETITIONER:



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. Rosenly
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 Pakistan, as the fiancé(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 the two years immediately preceding the filing 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, counsel submits a brief. Counsel states, in part, that the director abused his discretion by informing the petitioner that she could meet the beneficiary in a third country if travel for her to Pakistan makes her ill.

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. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) on December 1, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 1, 1998 and ended on December 1, 2000.

The petitioner stated in the original petition filing that she was unable to travel to Pakistan to visit the beneficiary because her college studies interfered with her ability to travel. In a subsequent response to a request for additional information from the director, the petitioner stated that she could not travel to Pakistan to visit the beneficiary because each time she traveled to that country, she became ill and "had to go to the clinic for a

check up." The petitioner submitted copies of her doctor's office visit reports, which indicated that she was treated for diarrhea.

In denying the petition, the director acknowledged that the petitioner becomes ill after returning from a trip to Pakistan, but stated the following about his reasons for denying the petition:

However, you have not established that you suffer from such an illness whenever you travel, regardless of the destination. Furthermore, while it would seem that your particular illness may result from poor water quality generally found in a less developed country such as Pakistan, you have not submitted evidence to show that it is an extreme hardship for you to meet the beneficiary in a third country with improved water supplies, such as Canada or England. Finally, you have provided no evidence to show that it is an extreme hardship for the beneficiary to travel to meet you in the United States, or that he has attempted to do so.

On appeal, counsel makes three claims. First, counsel states that the director erred in interpreting 8 C.F.R. 214.2(k)(2), but fails to specify or elaborate on the director's apparent error. Second, counsel states that the director is "irrational" because "the Beneficiary is not living in third country and there is no reason for the parties to go to a third world country just to camouflage the requirement of law." Third and finally, counsel states that "[i]t is obvious that [the] Petitioner's travel to meet the Beneficiary in Pakistan and getting sick and losing a year of study is extreme hardship."

Counsel has not presented any persuasive evidence on appeal to overturn the director's decision to deny the petition.

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 this particular case, the beneficiary has not sufficiently established that her suffering from diarrhea, while uncomfortable, makes travel a hardship. For example, not all individuals who suffer from diarrhea are unable to travel; therefore, the petitioner should have submitted evidence to show why the petitioner's illness places her at more risk of complications than other individuals with the same condition. Without this type of a detailed explanation, the petitioner cannot establish that her situation merits a waiver of the requirement to meet the beneficiary in person.

More importantly, however, counsel has not provided any evidence in support of his sweeping conclusion that "[i]t is obvious that [the] Petitioner's travel to meet the Beneficiary in Pakistan and getting sick and losing a year of study is extreme hardship." The petitioner never claimed that the diarrhea from which she suffers in Pakistan renders her unable to attend school for one year. The petitioner has never presented evidence that she failed to attend school for any period of time due to her suffering from diarrhea. A review of the medical reports that the petitioner submitted indicates that she was simply instructed by the physician to take *Pepto Bismol*, which is an over-the-counter medicine for diarrhea. Nothing in the reports indicate that the illness that the beneficiary suffered from after her visits to Pakistan would have rendered her unable to continue her studies for an entire year.

As previously stated, a waiver of the requirement of a personal meeting between a petitioner and a beneficiary is up to the sound discretion of a director. In this particular case, there is no reason to believe that the director abused his discretion in denying the petition. The petitioner has failed to establish that she and the beneficiary met as required by section 214(d) of the Act, and 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, and the petitioner may file a new I-129F petition after she and the beneficiary have met again 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.