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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

[redacted]

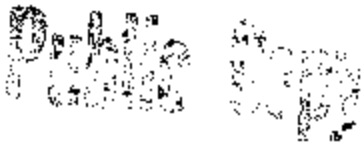
OFFICE OF ADMINISTRATIVE APPEALS
425 I St. N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 01 271 55099 Office: CALIFORNIA SERVICE CENTER Date: MAY 01 2002

IN RE: Petitioner: [redacted]
Beneficiary

Petition: Petition for Alien Fiancé(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



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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a naturalized 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 had failed to submit credible documentary evidence to establish that he and the beneficiary had personally met within two years before the date of filing the petition, as required by section 214(d) of the Act.

Section 101(a)(15)(K) of the Act defines "fiance(e)" as:

> An alien who is the fiancee 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 fiance(e) 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 petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on August 22, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 22, 1999 and ended on August 22, 2001.

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.

The regulation at section 214.2(k)(2) 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. Generally, a 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 linited to, serious medical conditions or hazards to U.S. citizens to travel to certain countries.

In response to Question #19 on the Form I-129F, the petitioner indicated that he and the beneficiary had personally met. In response to the director's request for additional information and documentary evidence concerning the parties' last meeting, the petitioner submitted photographs that were not film-dated. No additional information or documentary evidence, such as airline receipts or passport admission stamps, to substantiate the date of the parties' meeting was submitted. Accordingly, the director denied the petition for failure to comply with the regulatory requirements.

On appeal, the petitioner states that he recently found his passport and submits copies of every page in the document containing a date stamp. The evidence submitted includes eight stamps indicating that the petitioner traveled to St. Lucia and Barbados from 1994 through 1996; one stamp indicating that he returned to the United States through San Juan, Puerto Rico in 1996; one stamp indicating travel to or from an illegible location on March 22, 1999; and a final stamp which is illegible as to date and location of travel. Neither the petitioner's initial statement on the petition or the evidence submitted on appeal establishes that the petitioner and beneficiary personally met during the period August 22, 1999 through August 22, 2001.

The petitioner has failed to establish that he and the beneficiary have personally met within the time period specified in section 214(d) of the Act, or that extreme hardship or unique circumstances qualify him for a waiver of the statutory requirement. The petition will therefore be denied. 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.