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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536

1 APR 17 2003

File:  Office: CALIFORNIA SERVICE CENTER Date:
(WAC 02 268 50867 relates)

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


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 Nigeria, 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 date of filing the petition, 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.

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.

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on December 6, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 6, 1999 and ended on December 6, 2001.

In response to Question #19 on the Form I-129F, the petitioner indicated that he and the beneficiary had never personally met. In response to the director's request for additional information, the petitioner stated that he had not traveled to Nigeria to meet the beneficiary due to financial difficulties and personal responsibilities. The petition also submitted several photographs,

Western Union Receipts, an affidavit from his uncle, and letters from religious authorities of his church indicating that close and intimate contact before marriage is not allowed by the petitioner's church because the it abhors fornication that brings sin.

On appeal, the petitioner submits documentation establishing that he traveled to Nigeria to meet the beneficiary from August 20, 2002 through August 25, 2002.

It is important to emphasize that the regulation at section 214.2(k)(2) requires the petitioner to prove that he last met the beneficiary no more than two years *prior to* the filing date of the petition. In the instant case, the relevant two-year period is December 6, 1999 to December 6, 2001. The evidence submitted on appeal reflects that the petitioner visited the beneficiary in August 2002, eight months *after* having filed the petition. Although the petitioner and beneficiary have now met, the meeting did not occur within the relevant two-year period. Furthermore, the petitioner has failed to establish that he warrants a favorable exercise of discretion to waive the statutory requirement. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Now that the petitioner and the beneficiary have met, the petitioner may file a new I-129F petition in the beneficiary's behalf so that the two-year period in which the parties are required to have met 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.