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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

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D6

File: LIN 02 233 54433 Office: Nebraska Service Center Date:

JUL 18 2003

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 Poland, as the fiancée 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.

Section 101(a)(15)(K) of the Act defines "fiancé(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. . . .

Section 214(d) of the Act states, in pertinent part, that a fiancé(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 bona fide 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 Fiancé(e) (Form I-129F) with the Service on July 12, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 12, 2000 and ended on July 12, 2002.

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 travel to Poland to meet the beneficiary would have created a hardship for him, his family, and his employer. He explained that his daughter was under a doctor's care for teenage depression and he could not leave her. He further explained that his employer required him to train for the implementation of a new computer software system and that he was, therefore, unable to take any extended vacations during the two years prior to filing the petition. The petitioner also submitted

evidence that on September 28, 2000, the beneficiary was denied a visa to visit the United States by the American Consulate in Krakow, Poland.

On appeal, the petitioner submits a letter from his employer stating that the petitioner's position in the company is "key and critical," and that it would have been impossible for him to take a two-week holiday during the last few years.

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 regulations at § 214.2(k)(2) do 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 limited to, serious medical conditions or hazards to U.S. citizens to travel to certain countries.

In the instant case, the petitioner's reasons for not having met the beneficiary during the two years prior to filing the petition are not persuasive. The time required to travel to a foreign country is a normal difficulty encountered in complying with the requirement and is not considered extreme hardship.

It is concluded that 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 exist to qualify him for a waiver of the statutory requirement. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice. If the petitioner and the beneficiary meet in person, the petitioner may file a new I-129F petition on behalf of the beneficiary. The petitioner will be required to submit evidence that he and the beneficiary have met within the two-year period that immediately precedes the filing of a new petition. Without the submission of documentary evidence that clearly establishes that the petitioner and the beneficiary have met in person during the requisite two-year period, the petition may not be approved unless the director grants a waiver of that requirement.

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.