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

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: NEBRASKA SERVICE CENTER  
(LIN 03 084 53259 relates)

Date:

**NOV 05 2003**

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

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:

[REDACTED]

**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 Citizenship and Immigration Services (CIS) 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*

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 sustained. The decision of the director will be withdrawn and the petition will be approved.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Russia, 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 had failed to establish that he and the beneficiary had personally met within two years before the date of filing date of the petition, as required by section 214(d) of the Act. The director further found that the petitioner had failed to establish that he warranted a favorable exercise of discretion to waive this statutory requirement.

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, 8 U.S.C. § 1184(d), 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. . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) on January 17, 2003. Therefore, the petitioner and the beneficiary were required to have met during the period that began on January 17, 2001 and ended on January 17, 2003.

In response to Question #19 on the Form I-129F, the petitioner indicated that he and the beneficiary had never personally met. In a letter submitted in support of the petition, the petitioner explained that the beneficiary is a Christian living in an area that is 95% Muslim and that it would not be safe for her to travel out of the region. He further explained that flight delays are a concern and that the beneficiary may lose her job if she were to attempt to travel to Moscow to meet him. Finally, the petitioner stated that he is unable to travel due to his current employment

and his membership in the Indiana Guard Reserve. In support of the petition, the petitioner submitted a copy of an email message from his employer, HyVee Equipment, LLC, stating that the petitioner is indispensable at this time due to the sensitive nature of his work involving the redesign of a hybrid utility/towing vehicle for the United States Army. The petitioner also submitted a copy of an email message from an official of the Indiana Guard Reserve stating that the petitioner is currently on alert status as a member of the armory support team.

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.

On appeal, counsel for the petitioner submits a brief and additional documentation including affidavits from the petitioner and the beneficiary's son, the petitioner's medical records, a letter from his physician, and a newspaper article concerning Chechnyan separatist activity in the city where the beneficiary resides. Counsel asserts that a meeting of the petitioner and the beneficiary in either Russia or a third country would be practically impossible due to both safety reasons and the fact that the beneficiary would lose her job if she were to travel. Moreover, counsel asserts that the petitioner is being treated for medical conditions that preclude him from traveling. The documentation submitted indicates that the petitioner has osteoarthritis, localized osteopenia at the right femoral neck of his hip, and sleep apnea syndrome. Finally, counsel asserts that the petitioner is needed by his employer and the Indiana Guard due to the worldwide war on terrorism.

After a thorough review of the record, it is concluded that, in the instant case, the petitioner has provided sufficient documentary evidence to establish that he warrants a favorable exercise of discretion to waive the statutory requirement of having met the beneficiary within two years prior to the filing date of the petition. Therefore, the appeal will be sustained. The decision of the director will be withdrawn and the petition will be approved.



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 met that burden.

**ORDER:** The appeal is sustained. The decision of the director dated July 14, 2003 is withdrawn and the petition is approved.