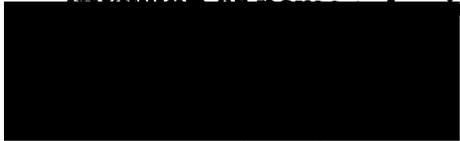


DC

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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



File: [Redacted] Office: NEBRASKA SERVICE CENTER
(LIN 03 043 55066 relates)

Date: OCT 28 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

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 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, 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 naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Thailand, 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 immediately preceding the filing date of the petition, as required by section 214(d) of the Act. In reaching this conclusion, the director found that the petitioner had failed to establish that he warranted a favorable exercise of discretion to waive this statutory requirement. The director also noted that since the petitioner stated that he and beneficiary are now married, the beneficiary no longer qualifies as a fiancée under section 101(a)(15)(K) of the Act.

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 November 25, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 25, 2000 and ended on November 25, 2002.

In response to Question #19 on the Form I-129F, the petitioner indicated that he and the beneficiary had met in November 2000. The director requested the petitioner to provide additional information and evidence concerning the specific date and place of the parties' last meeting. The petitioner responded with a letter stating that he initially met the beneficiary in Thailand between October 17, 2000 and November 15, 2000, and that over the next two years, they

corresponded by telephone and post.

The petitioner also stated in his response that he returned to Thailand in February 2003, and that the couple "were married on February 4, 2003 in a ceremony attended by many family members and friends." On appeal, the petitioner explains that he and the beneficiary were not legally married in February 2003, rather, he had returned to Thailand so that they could have an engagement ceremony.

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 § 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 limited to, serious medical conditions or hazards to U.S. citizens to travel to certain countries.

The petitioner has provided no reasons for not having traveled to meet the beneficiary during the required two-year period, other than a letter from his employer indicating that he works 44 hours per week. The time involved in traveling to a foreign country is a normal difficulty encountered in complying with the requirement and is not considered extreme hardship.

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 again 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 petitioner should 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 such requirement.

If, indeed, the parties are now married, the petitioner may wish to

file a Petition for Alien Relative (Form I-130) on behalf of the beneficiary, to classify her as the spouse of a United States citizen, in accordance with the regulations and instructions regarding such petitions.

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.