

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

DG



FILE:



Office: TEXAS SERVICE CENTER

Date:

APR 26 2005

SRC 04 219 51165

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas 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 of Ukraine and citizen of Kyrgyzstan, 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 not offered documentation evidencing 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. *Decision of the Director*, dated October 5, 2004.

Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K), provides nonimmigrant classification to an alien who:

- (i) is the fiancé(e) of a U.S. citizen and who seeks to enter the United States solely to conclude a valid marriage with that citizen within 90 days after admission;
- (ii) has concluded a valid marriage with a citizen of the United States who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or
- (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien.

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. . . .

Pursuant to 8 C.F.R. § 214.2(k)(2), the petitioner may be exempted from this requirement for a meeting if it is established that compliance would:

- (1) result in extreme hardship to the petitioner; or
- (2) that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The regulation at section 214.2 does not define what may constitute extreme hardship to the 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.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with Citizenship and Immigration Services on August 12, 2004. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 12, 2002 and ended on August 12, 2004.

On the Form I-129F petition, the petitioner indicated that he and the beneficiary had not met. The petitioner stated that he and the beneficiary corresponded via Internet, telephone and postal mail. The petitioner asserted that he and the beneficiary should be exempt from the meeting requirement owing to limited financial means.

On appeal, the petitioner states that he has acquired the money to travel to Kyrgyzstan to meet the beneficiary and planned to be in Ukraine from November 19, 2004 until December 18, 2004. *Form I-290B*, dated October 8, 2004. *See also Letter from William J. Sas*, dated October 8, 2004. In support of these assertions, the petitioner submits a copy of a check; a copy of an application that he filed to obtain a United States passport; a copy of a visa application form that he plans to file for Kyrgyzstan; a copy of an email message; a copy of a letter from the beneficiary's employer; two copies of court orders regarding child support owed by the petitioner and a copy of a document relating to the petitioner's health care premium.

In addition, the petitioner submitted a letter stating that he suffers from several medical ailments including Dysregulation Spectrum Syndrome. The letter requests that adjudication of the petitioner's appeal be expedited owing to his need to have the beneficiary join him in the United States as a result of his health condition. *Letter from William J. Sas*, dated March 16, 2005. In this more recent letter, the petitioner indicates that he sent photographs to Citizenship and Immigration Services of the petitioner and the beneficiary together as proof of his trip to Kyrgyzstan. The AAO notes that the record on appeal does not contain photographs as indicated by the petitioner.

The record seeks to establish that the petitioner and the beneficiary met during November 2004. Under section 214(d) of the Act, the petitioner and the beneficiary were required to have met between August 12, 2002 and August 12, 2004. The evidence of record does not establish that the petitioner and the beneficiary met as required. Taking into account the totality of the circumstances as the petitioner has presented them, the AAO does not find that compliance with the meeting requirement would result in extreme hardship to the petitioner or would violate strict and long-established customs of the beneficiary's foreign culture or social practice. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. **The petitioner may file a new Form I-129F petition on the beneficiary's behalf when sufficient evidence is available.**

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.