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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Date: JUL - 6 2001

Public Copy

[Redacted]

File:

[Redacted]

Office: TEXAS SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

[Redacted]

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)

IN BEHALF OF PETITIONER:

[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native of the USSR and a citizen of Russia, 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 the two years prior to the petition being filed as required by 8 C.F.R. 214.2(k)(2). In reaching this conclusion, the director found that the petitioner's failure to comply with the regulatory requirement was not the result of extreme hardship to the petitioner, or unique circumstances.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiance(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 fiancée 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 bonafide 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 Fiance(e) (Form I-129F) on November 22, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on November 22, 1998 and ended on November 22, 2000.

The petitioner stated in the original petition filing that he was unable to travel to Russia because he suffered from diabetes, asthma, chronic diarrhea and chronic gastroesophageal reflux disease. The petitioner submitted a letter from his physician who stated that "I think it would be a medical hardship for him to travel." Additionally, the petitioner claimed that he was unable

to travel because he cared for his mother, with whom he lived.

In denying the petition, the director acknowledged that the petitioner suffered from illnesses, but stated the following about his reasons for denying the petition:

First, travel may be difficult for you but not impossible. There are many organizations that specialize in travel for the physically and medically challenged. Second, even though the beneficiary could not get a visa to the United States, you could have met her in Canada, Mexico or one of the offshore islands. If you had made arrangements to meet the beneficiary in a country close to the United States, you yourself would not have had to travel a long distance.

On appeal, counsel claims that it is a medical impossibility for the petitioner to travel. Counsel presents an updated letter from the petitioner's physician as well as a letter from his psychologist in support of her position that the petitioner cannot travel to meet the beneficiary. Counsel also states that the Service should take into consideration the petitioner's role as a caregiver for his mother with whom the petitioner lives. Counsel cites several unpublished decisions from this office in support of her claims that the Service should grant the petitioner a waiver from meeting the beneficiary in person.

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 with the regulation 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.

This regulation, however, 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. In analyzing all of the evidence in the record, we are not inclined to overturn the director's decision for the reasons that we discuss below.

Before discussing the merits of the case, it is important to emphasize that this office is looking at the petitioner's claimed medical situation during the November 22, 1998 to November 22, 2000 time frame, which is the two-year period immediately preceding the filing of the petition. We note that on appeal, counsel presents a letter from the petitioner's physician and a

letter from the petitioner's psychologist.

The letter from the physician is dated March 29, 2001 and is an updated letter from the October 25, 2000 letter from the physician that the record already contained. According to the physician in his October 25th letter, the petitioner suffered from diabetes, asthma, chronic diarrhea and chronic gastroesophageal reflux disease. The March 29th letter states that the petitioner currently suffers from the aforementioned conditions in addition to a fear of flying, varicose veins, hemorrhoids, thyroid nodules, a pancreatic problem, and claustrophobia. As the physician did not raise the additional medical problems in his October 25th letter, we must assume that these conditions did not exist during the relevant two-year period that we are analyzing.

Similarly, the letter from the psychologist is dated March 20, 2001, and states that the petitioner suffers from a panic disorder and claustrophobia. As neither counsel nor the petitioner ever claimed that the petitioner was under the care of psychologist prior to the denial of the petition or suffered from a panic disorder or claustrophobia, we assume that these conditions also did not exist during the relevant two-year period.

Accordingly, in evaluating whether the petitioner qualifies for a waiver, we will not consider the physician's letter that is dated March 29, 2001 or the psychologist's letter that is dated March 20, 2001, as both letters include information that pertains to illnesses that the petitioner appears to have acquired after the filing of the petition. If the petitioner would like the Service to consider this evidence, he may file a new I-129F petition in the beneficiary's behalf.

The petitioner raises two reasons for his inability to travel. The first reason concerns his role as a caregiver for his mother, while the second reason concerns his health problems.

I. ROLE AS A CAREGIVER

The petitioner states that he is unable to travel because he is the sole caregiver for his mother, with whom he lives. In the initial petition filing and on appeal, the petitioner does not state the types of caregiving services that he provides for his mother. Nevertheless, routine services such as grocery shopping picking-up medications, housecleaning, and taking his mother to doctors' appointment are services that the petitioner could pay a visiting nurse or other professional to perform. The petitioner could contract caregiving services on a temporary basis in order for him to travel for a brief visit to meet the beneficiary. Therefore, in this particular case, the petitioner's role as a caregiver does not constitute a valid reason for being unable to meet the beneficiary in person during the relevant two-year

period.

II. HEALTH OF THE PETITIONER

In the October 25, 2000 letter from the physician, [REDACTED] regarding the petitioner's health, [REDACTED] stated that the petitioner suffered from diabetes, asthma, chronic diarrhea and chronic gastroesophageal reflux disease. [REDACTED] concluded that "[t]hese medical problems make it extremely difficult for him to travel more than short distances."

[REDACTED] did not, however, explain why each condition from which the petitioner suffered would make travel for the petitioner a hardship. For example, not all individuals who suffer from diabetes are unable to travel; therefore, [REDACTED] should have explained why the petitioner's diabetes places him at more risk of complications than other diabetics if the petitioner were to travel. Without this type of a detailed explanation, the petitioner cannot establish that his situation merits a waiver of the requirement to meet the beneficiary in person.

More importantly, however, the record contains evidence that contradicts [REDACTED] claim that even short distance travel is difficult for the petitioner, as well as counsel's claim on appeal that "I drive an hour to meet my client in Titusville because he is unable to even travel this short distance [approx. 40 miles]."

The record contains a copy of an e:mail exchange between the petitioner and the beneficiary in which the petitioner states that "my daughter will be here in a few hours, and then we will drive to the hospital in northport fla... ." Titusville, Florida, where the petitioner resides, is approximately 196 miles from North Port, Florida, and the ability of the petitioner to make this trip belies [REDACTED] and counsel's claims.

Furthermore, the record indicates that the petitioner is employed on a full-time basis as a water plant operator, and routinely performs household chores. Neither counsel nor the petitioner has explained how the petitioner can pursue full-time employment and take care of the rudimentary tasks of keeping a household, but cannot travel.

On appeal, counsel states that "case law, however, also shows that a waiver will be granted if the hardship is a medical one;" however, this claim is incorrect. First, the unpublished Administrative Appeal Office decisions to which counsel refers are not binding legal precedent upon Service officers. Second, the Service will not grant a waiver for all medical conditions as matter of policy.

As previously stated, a waiver of the requirement of a personal

meeting between a petitioner and a beneficiary is up to the sound discretion of a director. In this particular case, we do not have any reasons to believe that the director abused his discretion in denying the petition. The mere fact that the petitioner suffers from health problems does not merit a favorable exercise of discretion, as the petitioner fails to show that these medical conditions would cause him extreme hardship by travelling.

The petitioner has failed to establish that he and the beneficiary have personally met as required by section 214(d) of the Act, and that extreme hardship or unique circumstances qualify him for a waiver of the statutory requirement. Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice, and the petitioner may file a new I-129F petition after he and the beneficiary have met in person.

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.