

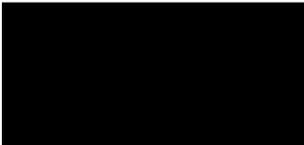


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U.S. Department of Justice
Immigration and Naturalization Service

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

Date: JUL 6 2001



Public Copy

File:

Office: VERMONT SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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:



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

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and 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 and citizen of Columbia, 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 fiance 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 Petition for Alien Fiance(e) (Form I-129F) was filed with the Service on January 11, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on January 11, 1998 and ended on January 11, 2000.

On the petition, the petitioner specified that he and the beneficiary had personally met in a store in Cali, Columbia and that he and the beneficiary had a child together. The director requested additional information from the petitioner about the circumstances surrounding the petitioner's and the beneficiary's last meeting. In response, the director received a letter from

the petitioner's sibling, who stated that the petitioner and the beneficiary had not met within the past 2 years because the petitioner had been incarcerated in the United States during that period of time. In support of this claim, the petitioner's sibling submitted a letter from the petitioner's probation officer.

Citing that extreme hardship did not qualify the petitioner for a waiver, the director denied the petition.

On appeal, counsel claims that the petitioner was unable to travel during the two-year period prior to the filing of the petition because the petitioner was incarcerated. Counsel claims that the petitioner and the beneficiary maintained correspondence during the petitioner's period of incarceration and that the petitioner provided financial support to the beneficiary to raise their child. Counsel suggests that the petitioner's incarceration, which made him unable to travel to Columbia, is a circumstance of extreme hardship to the petitioner.

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.

The petitioner's reason for not traveling to Columbia to meet the beneficiary is not a ground for a favorable exercise of discretion by the director.

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.

In the instant case, the petitioner's inability to travel to Columbia results from his incarceration for transporting heroin into the United States from Columbia. Although the petitioner and the beneficiary have a child together and regularly corresponded while the petitioner was incarcerated, these reasons do not persuade the Service to find that the petitioner's incarceration amounted to extreme hardship to him. The petitioner's incarceration rendered him unable to travel to Columbia during the requisite period; however, it is a situation that the petitioner had the ability to control. Furthermore, the petitioner's incarceration and subsequent parole are of limited duration.

Accordingly, the Service is not inclined to waive the requirement of a personal meeting between the petitioner and the beneficiary.

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 again 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.