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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

Public Copy



File: 

Office: VERMONT SERVICE CENTER

Date: APR 27 2001

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:

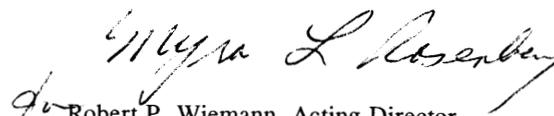
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prevent clearly unwanted
invasion of personal privacy.

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The case will be remanded to the director for entry of new decision in accordance with the foregoing.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of Cameroon, 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 previously met in person, as required by section 214(d) of the Act. In reaching this conclusion, the director found that the petitioner's failure to comply with the statutory requirement was not the result of extreme hardship to the petitioner, or unique circumstances.

Pursuant to 8 C.F.R. 103.3(a)(2)(i), an affected party has 30 days after service of a decision to file an appeal with the office that made the unfavorable decision. The record reflects that the director's decision of August 15, 2000, was sent to the petitioner at her address of record. The appeal was received by the Service 45 days later on September 29, 2000. The appeal was untimely filed.

The regulation at 8 C.F.R. 103.3(a)(2)(v)(B)(1) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. 103.2(a)(2)(v)(B)(2), however, states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceedings, supported by affidavits or other documentary evidence. 8 C.F.R. 103.5(a)(3) requires that a motion to reconsider state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner submits evidence on appeal, which satisfies the requirements of a motion. Therefore, this case will be remanded to the director to treat the appeal as a motion. The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of



proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The petition is remanded to the director for entry of a new decision in accordance with the foregoing.