



Do

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: NEBRASKA 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:



identification 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 nonimmigrant visa petition was denied by the Director, Nebraska 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 Vietnam, 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.

On appeal, counsel submits a brief.

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 petition was filed with the Service on March 7, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 7, 1998 and ended on March 7, 2000.

On appeal, counsel claims that the petitioner and the beneficiary did meet within the required period because the petitioner had previously submitted another I-129F petition to the U.S. Consulate General in Ho Chi Minh City in May 1998. Counsel claims that this prior filing of the petition should be the filing date used by the Service in a determination of whether the petitioner and the beneficiary met within the required two-year period. Counsel

asserts that if the filing date of the first petition is used, the petitioner and the beneficiary would be in compliance with the statute, as they met in Vietnam during their engagement party in July 1997.

Counsel's argument on appeal is not persuasive. The record contains evidence that the first petition filed by the petitioner in May 1998 was denied by the U.S. Consulate in December 1998. The denial of the petition effectively terminated the petition, and the beneficiary cannot use the filing date of the first petition as the filing date for her second petition.

The record contains the second I-129F petition, which was filed by the petitioner in the beneficiary's behalf on March 7, 2000. The record also includes evidence that the petitioner and the beneficiary met in July 1997, more than two years before the filing of the second petition.

Pursuant to 8 C.F.R. 214.2(k)(2), a district 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 petitioner did not present any reason why it was a hardship for her to meet the beneficiary during the required two-year period, which began on March 7, 1998 and ended on March 7, 2000. As previously stated, counsel's argument that the filing date from the first petition should be controlling is rejected, as the first petition was denied and, therefore, was no longer pending.

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 her 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 she 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.

[REDACTED]