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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

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

[Redacted]

DEC 08 2002

File: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]
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:

SELF-REPRESENTED

PUBLIC COPY

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, Director
Administrative Appeals Office

DISCUSSION: The Director of the California 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 and citizen of the People's Republic of China (China), as the fiancé(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 met within the two-year period that immediately preceded the filing of the petition.

On appeal, the petitioner submits a statement and additional evidence.

8 C.F.R. 214.2(k)(2) states, in pertinent part:

Requirement that petitioner and beneficiary have met.
The petitioner shall establish to the satisfaction of the director that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition.

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) with the Service on January 25, 2001. Therefore, the two-year period immediately preceding the filing of the petition is January 25, 1999 through January 25, 2001. The petitioner has the burden of proving that he met the beneficiary in person sometime during this period of time.

The petitioner stated in the initial petition filing that he had known the beneficiary for fifteen years, but he had not seen her in person prior to the filing of the petition because he did not want to return to China without being a United States citizen. The director did not find the petitioner's explanation compelling, and she denied the petition for failure of the petitioner and the beneficiary to meet in person during the requisite period of time.

On appeal, the petitioner states that he traveled to China in February of 2001 and in April of 2001 to meet the beneficiary. The petitioner submits his airline ticket stubs and a copy of his passport to evidence these facts. The petitioner also states that he married the beneficiary in China in April of 2001. To evidence this fact, the petitioner submits a copy of his marriage certificate and two wedding photographs.

The petitioner has not presented persuasive evidence to overturn the director's decision to deny the petition.

The regulation at § 214.2(k)(2), which is cited above, requires a petitioner to prove that he last met the beneficiary no more than two years prior to the filing of the petition. In the instant case, the relevant two-year period is January 25, 1999 to January 25, 2001. According to the petitioner, his last meeting with the beneficiary occurred in 1988, approximately 11 years prior to the beginning of the two-year period and 13 years prior to the filing of the petition. Thus, the petitioner did not comply with the regulatory requirement of last meeting the beneficiary within the specified timeframe. Nevertheless, the petitioner requested a waiver of the requirement because he did not want to return to China until he had secured his United States citizenship.

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, 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.

The regulation 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.

The petitioner did not establish that returning to China during the required timeframe would have resulted in extreme hardship to him. The petitioner stated that he needed his United States citizenship to protect himself because he sympathized with the student movement in China. However, the petitioner did not adequately explain why he needed the protection of United States citizenship for his travel to China. For example, the petitioner did not state why the government of China would have wanted to harm him and the basis for fearing that his safety would have been in jeopardy. Accordingly, the petitioner has not sufficiently shown that his circumstances warranted a favorable exercise of discretion by the director, and the director's decision to deny the petition will be affirmed.

The denial of this I-129F petition is without prejudice to the filing of a new petition to accord the beneficiary classification as the fiancé(e) of a United States citizen. Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8

U.S.C. 1101(a)(15)(K), states that an alien may be classified as a fiancé(e) if he or she:

- (i) 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 admission; or
- (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 * * *

If the petitioner would like his spouse to be classified as 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, the petitioner should file a Petition for Alien Relative (Form I-130) with the Service. The Form I-130 with its accompanying instructions may be obtained from a local Immigration and Naturalization Service (INS) office, through the INS's official website at www.ins.usdoj.gov, or by phone at 1-800-870-3676. After the filing of the I-130 petition, the petitioner may submit a new I-129F petition to classify the beneficiary as a fiancé(e) pursuant to section 101(a)(15)(K)(ii) of the Act.

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.