



U.S. Department of Justice
Immigration and Naturalization Service

116

OFFICE OF ADMINISTRATIVE APPEALS

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JAN3001-02D6101

File: [Redacted]

Office: NEBRASKA SERVICE CENTER Date:

JAN 30 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:
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

Mary C. Mulrean, 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 the Philippines, 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 petition was filed with the Service on April 14, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on April 14, 1998 and ended on April 14, 2000.

On the Petition for Alien Fiance(e) (Form I-129F), the petitioner specified that he and beneficiary had not personally met because of the prohibitive cost of airline travel to and from Hong Kong. On appeal, the petitioner states that he was not truthful when he provided this reason for failing to meet the beneficiary.

According to the petitioner, he is unable to travel to Hong Kong to meet the beneficiary because he is on parole for drinking under the

influence (DUI) and is unable to leave the state of Michigan. The petitioner submits evidence of his parole on appeal, which indicates that he is on parole for a 24 month period beginning on July 13, 2000.

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 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 Hong Kong to meet the beneficiary is compelling; however, it is not a ground for a favorable exercise of discretion by the district director.

The reason for the petitioner's inability to travel to Hong Kong is temporary in nature. There is no indication in the parole record that once the petitioner has complied with the terms of his parole, he would be unable to travel to Hong Kong or any other country to meet the beneficiary. Although the petitioner's current living situation may be difficult, it is a situation that does not qualify him for an exemption from the regulatory requirement due to extreme hardship.

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.