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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 3 2001



Public Copy

File:



Office: NEBRASKA 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:

SELF-REPRESENTED

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, Nebraska Service Center, 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 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 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.

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...[emphasis added]

The Petition for Alien Fiance(e) (Form I-129F) was filed with the Service on July 9, 1999. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 9, 1997 and ended on July 9, 1999.

In response to Question #19 on the Form I-129F, the petitioner indicated that the beneficiary and the petitioner had not met. Therefore, the director requested additional information from the petitioner about his reasons for not having met the beneficiary. In response, the petitioner explained that was unable to visit the beneficiary in the Philippines because his work would not give him any vacation leave and because he was needed to help take care of his two daughters. Citing that the petitioner was not eligible

for a favorable exercise of discretion, the director denied the petition.

On the Form I-290B, which was filed in January of 2000, the petitioner stated that he "should be exempted because of the social practices and long established customs of the culture of the petitioner and the beneficiary (brief will follow). The petitioner did not elaborate on this statement or submit a brief. On July 21, 2000, the beneficiary submitted a letter in which she stated that the petitioner visited her in the Philippines from April 29, 2000 through May 4, 2000. The beneficiary submitted photographs of her and the petitioner together.

Section 214(d) of the Act specifically requires the petitioner to prove that he and the beneficiary had met in person within two years before the date of filing the petition. In the instant case, the relevant two-year period is July 9, 1997 to July 9, 1999. According to evidence the petitioner submits on appeal, the petitioner and beneficiary met in April and May of 2000, approximately nine months after the filing of the petition.

As the meeting between the petitioner and the beneficiary did not occur until after the petition was filed, the appeal must be dismissed. Pursuant to 8 C.F.R 214.2(k)(2), however, the denial of this petition is without prejudice. Accordingly, now that the petitioner and the beneficiary have met in person, the petitioner may file a new I-129F petition in the beneficiary's behalf so that a new two-year period in which the parties are required to meet will apply.

It is noted that should the petitioner submit a new petition in the beneficiary's behalf, he must present documentation that shows the dates of his visit to the Philippines. This documentation may include, but is not limited to, a copy of his travel itinerary or a copy of his plane tickets. As the record is presently constituted, the photographs of him with the beneficiary only establish that they have met in person. The photographs, by themselves, do not establish the date(s) and place(s) where the personal meeting between the two parties took place.

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.