



166

U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



MAR - 8 2001

File:



Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



Identification data deleted to
prevent clearly unarranted
invasion of personal privacy.

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:



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 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. The petitioner had claimed that he is unable to travel to the Philippines to meet the beneficiary because he must care for his elderly mother.

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 October 26, 1999. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 26, 1997 and ended on October 26, 1999.

On the Petition for Alien Fiance(e) (Form I-129F), the petitioner specified that he and the beneficiary had never met in person. Therefore, on January 11, 2000, the director requested that the petitioner explain why he and the beneficiary had not met within the two-year period before the filing of the petition, as required by law. In response, the petitioner stated that he is the sole caregiver for his 87 year-old mother, so he is unable to leave his

mother alone or with any other individual for any period of time. The petitioner also submitted a letter from his physician, who recommended that the petitioner not leave the petitioner's mother because the petitioner is the only individual who provides care for the petitioner's mother. Citing that no extreme hardship or unique circumstances existed to warrant a waiver of the requirement to meet in person, the director denied the petition because the petitioner and the beneficiary had not met. In reaching this conclusion, the director stated that "... nothing provided in the evidence submitted precludes the petitioner from finding someone else to care for this mother while he travels for a short period."

On appeal, the petitioner submits a letter in which he details the types of services he provides to his ailing mother, which include performing the grocery shopping, taking his mother to doctors' appointments, and picking-up his mother's medicine, among other duties. The petitioner claims that "my mother is not an invalid and I don't want to imply that, but I do want you to know that my love and care for her is her very life support." The petitioner also states on appeal that he is unable to travel due to his own medical ailments, which include prostate cancer, heart problems, dizzy spells, and problems with flying and heights.

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 evidence that the petitioner submits on appeal does not persuade the Associate Commissioner to overcome the director's decision to deny the petition. As stated by the director in his denial, the types of services that the petitioner provides to his mother, such as grocery shopping and picking-up medications, are services that the petitioner could pay a visiting nurse or other professional to perform while the petitioner is away meeting the beneficiary. The petitioner has not persuasively established that travel to the Philippines to meet the beneficiary would be an extreme hardship to him, despite that he is a caregiver for his mother. Caregiving services on a temporary basis can be contracted by the petitioner.

Furthermore, although the petitioner claims on appeal that he suffers from medical ailments, which make travel a hardship to him, the petitioner did not support his claims with any documentary evidence, particularly medical documentation of his ailments and how they impede his ability to travel. Simply going on record without supporting documentary evidence is not sufficient for the

purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). More importantly, however, the petitioner never raised his own medical ailments as a basis for being unable to travel, despite having the opportunity to present such information to the director. Raising the petitioner's own medical concerns now on appeal calls into question the genuineness of the petitioner's claims of being unable to meet the beneficiary in person.

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.