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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



File: 

Office: TEXAS SERVICE CENTER

Date:

MAY 7 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)

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

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 suffers from several medical conditions that make travel to the Philippines intolerable.

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...

The Petition for Alien Fiance(e) (Form I-129F) was filed with the Service on August 7, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on August 7, 1998 and ended on August 7, 2000.

On the petition, the petitioner specified that he and beneficiary had not met in person because the petitioner's doctors had recommended that he not travel to the Philippines. The petitioner submitted two letters from two doctors, each of whom stated that the petitioner should not travel overseas as he suffers from several medical conditions that make travel problematic. The director did not find the doctors' letters compelling and stated

that the petitioner's medical conditions did not warrant a waiver of the requirement of an in-person meeting between the petitioner and the beneficiary.

On appeal, the petitioner submits additional letters from doctors. According to the physicians, the petitioner has suffered from several illnesses for a number of years that render travel outside of the U.S. inadvisable and possibly dangerous to the petitioner's health and emotional welfare.

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 record contains sufficient evidence that a personal meeting between the petitioner and the beneficiary would result in extreme hardship to the petitioner. The petitioner has presented persuasive documentation that during the two-year period before filing the petition, the petitioner had been under the care of at least two physicians for illnesses that make travel overseas dangerous to his health and emotional stability. Therefore, extreme hardship qualifies the petitioner for a waiver of the statutory requirement.

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 met that burden.

ORDER: The appeal is sustained.