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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: CALIFORNIA SERVICE CENTER

Date: MAY 21 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

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California 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 Cambodia, 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 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 October 17, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 17, 1998 and ended on October 17, 2000.

In response to Question #19 on the Form I-129F, the petitioner indicated that the beneficiary had not met and seen her. The petitioner added that "I would like to let you know I will go to see my fiance in Nov. 8, [2000] at Cambodia." Citing that no meeting between the beneficiary and the petitioner had ever taken place and no unique circumstances existed to waive this requirement, director denied the petition.

On appeal, the petitioner states that she traveled to Cambodia in November of 2000 at which time she and the beneficiary became engaged. The petitioner submits photographs of her and the beneficiary together as well as a videotape of their engagement ceremony.

Section 214(d) of the Act specifically requires the petitioner to prove that she 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 October 17, 1998 to October 17, 2000. According to evidence the petitioner submits on appeal, the petitioner and beneficiary met in November of 2000, less than one month 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. Therefore, 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.

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.