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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



Public Copy

File:



Office: VERMONT 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)

IN BEHALF OF PETITIONER:



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, Vermont 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 personally met within two years before the date of filing the petition 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 June 26, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on June 26, 1998 and ended on June 26, 2000.

The record reflects that the petitioner and the beneficiary met in person in 1996. The record also reflects that in June 1998, the beneficiary, in a letter, asked the petitioner to marry him; however, the petitioner did not accept his proposal until some time later when her parents consented to the union.

The director found that the personal meeting between the petitioner

and the beneficiary, which occurred prior to June 26, 1998, was not within two years before the date of filing the petition. The director did not find that the beneficiary's proposal was a sufficient reason to waive the in person meeting between the two parties. Accordingly, the petition was denied.

On appeal, counsel states that there was "substantial compliance" with the statutory requirement, as the beneficiary and the petitioner have met in person. Counsel maintains that the proposal of marriage, which did not occur immediately after the in person meeting between the petitioner and the beneficiary, should excuse their failure to comply with the statute.

Pursuant to 8 C.F.R. 214.2(k)(2), a 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.

Counsel's argument on appeal is not persuasive. Although the petitioner and the beneficiary have met in person, they did not see each other in person within the period of time prescribed by section 214(d) of the Act. Furthermore, the petitioner did not present any reason why it would be a hardship for her to travel to the Philippines, or why it would be a hardship for her to travel to a third country to meet the beneficiary.

The petitioner has failed to establish that she and the beneficiary have personally met within the time period specified in section 214(d) of the Act, and that extreme hardship or unique circumstances qualify her 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 to the filing of another I-129F in the future.

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.