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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: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: 01 OCT 2001

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 Director of the California Service Center denied the nonimmigrant visa petition 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 People's Republic of China (China), 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.

8 C.F.R. 214.2(k)(2) states, in pertinent part:

Requirement that petitioner and beneficiary have met.
The petitioner shall establish to the satisfaction of the director that **the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition.** [emphasis added]

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on May 11, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 11, 1998 and ended on May 11, 2000.

In response to Question #19 on the Form I-129F, the petitioner stated that he and beneficiary had known each other since junior high school. The petitioner elaborated that he and his family moved to the United States in 1992, which was the last year he and the beneficiary saw each other. The petitioner requested that the director waive the requirement of a personal meeting between him and the beneficiary because (1) he had been stationed in Germany with the United States army and could not take any leave, and (2) he and the beneficiary had been corresponding since 1992. Nevertheless, the director denied the petition, citing that no unique circumstances existed to waive the requirement of a personal meeting between the petitioner and the beneficiary within the two years that immediately preceded the filing of the petition.

On appeal, the petitioner submits evidence that he traveled to China in April of 2001. The petitioner states that this evidence establishes that he and the beneficiary met "in two years."

It is important to emphasize that the regulation at § 214.2(k)(2)

requires a petitioner to prove that he last met the beneficiary no more than two years prior to the filing of the petition. In the instant case, the relevant two-year period is May 11, 1998 to May 11, 2000. According to evidence the petitioner submits on appeal, the petitioner and beneficiary last met in April of 2001, approximately eleven months after the filing of the petition. Therefore, although the petitioner and the beneficiary have met in person, their last meeting did not occur within the relevant two-year period, which in this case is from May 11, 1998 through May 11, 2000.

The director's decision to deny the petition is, therefore, affirmed. 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 should 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 petitioner should submit evidence that he and beneficiary have met within the two-year period that immediately precedes the filing of the petition. Acceptable documentary evidence includes, but is not limited to, photographs of the petitioner and the beneficiary together that indicate the date(s) and place(s) of their meeting, copies of the petitioner's travel itinerary, and a copy of the petitioner's airline ticket receipt. Without documentary evidence that clearly establishes that the petitioner and the beneficiary met in person during the requisite two-year period, the petition may not be approved unless the director grants a waiver of such a 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 not met that burden.

ORDER: The appeal is dismissed.