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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: VERMONT SERVICE CENTER

Date: OCT 11 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

Identity of the individual 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

Myra L. Rosenberg
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont 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 Korea, as the fiancé(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.

On appeal, the petitioner submits a statement and additional evidence.

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...[emphasis added]

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) on December 29, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 29, 1998 and ended on December 29, 2000.

In response to Question #19 on the Form I-129F, the petitioner indicated that the beneficiary and the petitioner had not met, but they had been writing to each other for several months. The petitioner stated that he could not travel to Korea to meet the beneficiary because, as the single parent of a 16-year-old son, he

could not travel outside of the United States. Nevertheless, citing that no unique circumstances existed that would warrant a waiver of the personal meeting requirement, the director denied the petition.

On appeal, the petitioner states that he will be traveling to Korea on June 14, 2001 for a seven-day trip; the petitioner submits a copy of his plane ticket as evidence of his travel arrangements. Although the petitioner stated on the Form I-290B that by July 5, 2001, he would submit documentary evidence of his and the beneficiary's personal meeting in Korea, no additional information has been received into the record. Therefore, the record is considered complete.

Section 214(d) of the Act specifically requires the petitioner to prove that he 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 December 29, 1998 through December 29, 2000. Assuming that the petitioner did travel to Korea as planned, the petitioner and beneficiary would have first met in June of 2001, approximately 6 months after the filing of the petition.

As the meeting between the petitioner and the beneficiary had not yet taken place at the time the petition was filed and as no unique circumstances existed to warrant a waiver of the personal meeting requirement, the appeal must be dismissed. Pursuant to 8 C.F.R 214.2(k)(2), however, the denial of this petition is without prejudice.

Accordingly, if the petitioner did travel to Korea as planned and still desires to petition for the beneficiary, he 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. Such evidence includes, but is not limited to, photographs of the couple together that indicate the place(s) and date(s) of their meeting.

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.