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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20546



File: LIN 01 219 S3399 Office: NEBRASKA SERVICE CENTER Date: **MAY 13 2002**

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Alien Finnee(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

PHOTOCOPY

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 in 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and 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 Act defines "fiance(e)" as:

An alien who is the fiancee 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 fiance(e) 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) with the Service on June 11, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on June 11, 1999 and ended on June 11, 2001.

In response to Question #19 on the Form I-129F, the petitioner indicated that she and the beneficiary had not met in person but had corresponded by mail and telephone. She also noted that due to civil unrest and terrorist activity, it was not safe for her to travel to the Philippines. The director denied the petition because the petitioner and the beneficiary had never met as required by law and the petitioner had failed to establish that compliance with the requirement would cause her extreme hardship.

On appeal, the petitioner submits a letter indicating that her wedding to the beneficiary is planned for October 2001, the

reception facilities are paid for, her employer has arranged for her to take time off, and relatives have requested time off and purchased plane tickets to attend the ceremony. She states that she had originally planned to meet the beneficiary earlier in 2001, but that due to severe civil unrest, terrorist activity, and kidnapping of foreigners in the Philippines, the couple had decided to marry in the United States.

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.

The regulation at section 214.2(k)(2) does not define what may constitute extreme hardship to a petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty. Examples of such circumstances may include, but are not limited to, serious medical conditions or hazards to U.S. citizens to travel to certain countries.

In the instant case, the petitioner's desire not to travel to the Philippines does not preclude her from travelling to a third country to meet the beneficiary. It is also noted that the Department of State Consular Information Sheet, submitted by the petitioner as evidence of the danger in travelling to the Philippines, states that "[m]ost of the country is hospitable to travel. . ." and that "[s]ecurity is not a concern at the popular tourist and diving sites." 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, or that extreme hardship or unique circumstances exist to qualify her for a waiver of the statutory requirement. Therefore, the petition will be denied.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of the petition is without prejudice. Once 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 the two-year period in which the parties are required to have met will apply. The petitioner should submit evidence that she and the beneficiary have met within the two-year period that immediately precedes the filing of a new petition. Without the submission of documentary evidence that clearly establishes that the petitioner and the beneficiary have met in person during the requisite two-year period, the petition

may not be approved unless the director grants a waiver of such 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.