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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536



AUG 05 2003

File:  Office: NEBRASKA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


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 Administrative Appeals Office (AAO) 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 fiancée 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 had failed to establish that he warranted a favorable exercise of discretion to waive this statutory requirement.

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 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) on September 26, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on September 26, 2000 and ended on September 26, 2002.

In response to Question #19 on the Form I-129F, the petitioner indicated that he had never met the beneficiary in person. The petitioner informed the Bureau that he is the single parent of two young boys who attend school and as such, it was difficult for him to travel to the Philippines to meet his fiancée. He also indicated that he intended to travel to the Philippines in April 2003.

On appeal, the petitioner states that he traveled to the Philippines in April, 2003 to visit his fiancée.

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.

In the instant case, the petitioner's stated reasons for needing a waiver are not persuasive. Financial and time constraints are normal difficulties encountered in complying with the requirement and are not considered extreme hardship to the petitioner. In addition, the petitioner has failed to establish that compliance with the requirement would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

The petitioner failed to overcome the director's objection to granting the petition. The petitioner sought to overcome the director's objection by traveling to the Philippines to visit his fiancée after he filed the petition. The regulations require that a petitioner meet his fiancée in the two-year period prior to filing the petition.

Pursuant to 8 C.F.R § 214.2(k)(2), the denial of this petition is without prejudice. The petitioner may file a new I-129F petition on behalf of the beneficiary. The petitioner will be required to submit evidence that he 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 that 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.