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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



File:  Office: Vermont Service Center

Date: AUG 19 2003

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Alien Fiancé(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

PUBLIC COPY

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 Bureau of Citizenship and Immigration Services (Bureau) 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, Vermont Service Center, and an appeal of that decision was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the order dismissing the appeal will be affirmed. The petition will be denied.

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 on August 22, 2002, 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. On January 31, 2003, the AAO affirmed that decision on appeal. The instant motion was filed on April 4, 2003.

According to 8 C.F.R. § 103.5(a)(1)(i), a motion to reopen or reconsider must be filed by the petitioner within 30 days of the decision that the motion seeks to reopen or reconsider. Failure to file before this period expires may be excused in the discretion of the Bureau where it is demonstrated that delay was reasonable and was beyond the control of the petitioner.

On motion, the petitioner submits a letter and documentation indicating that he was unable to file a timely motion because he was at sea, employed as a steward on board a merchant vessel chartered to the U.S. government. Based on the evidence presented, it is determined that the petitioner's delay in filing the motion was reasonable and beyond his control.

However, according to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Bureau policy. To prevail on a motion for reconsideration, the petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." *Id.* According to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

On motion, the petitioner has not presented new evidence that was previously unavailable and has not established that the prior decision was based on an incorrect application of law. The petitioner essentially seeks another delay in the adjudication of



the petition until he is discharged from his current employment responsibilities and has time to take care of medical and financial matters. There is no provision for such adjudication on a motion to reopen or a motion to reconsider.

The petitioner has failed to establish that this action meets the applicable requirements of a motion and it must be dismissed.

ORDER: The motion is dismissed.