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U.S. Department of Justice

Immigration and Naturalization Service

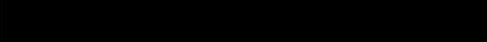
**D6**

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

File:  Office: CALIFORNIA SERVICE CENTER Date: **FEB 28 2003**  
(WAC 02 090 51611 relates)

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

**INSTRUCTIONS:**

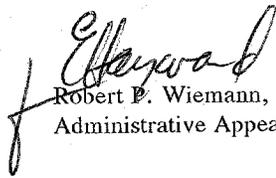
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert D. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a naturalized 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).

Section 214(d) of the Act, 8 U.S.C. 1184(d), states in pertinent part that a fiance(e) petition ". . . shall be in such form and contain such information as the Attorney General, shall, by regulation, prescribe. . . ." Also relevant is 8 C.F.R. 103.2(a) which states that ". . . [e]very application, petition or other document submitted on a form prescribed by this chapter shall be executed and filed in accordance with the instructions contained on the form. . . ."

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on January 10, 2002. On March 11, 2002, the director requested the petitioner to submit the following documentation required in support of the petition: photographs of the petitioner and the beneficiary; evidence that the petitioner and beneficiary had personally met within two years prior to the filing date of the petition, or documentation to support a waiver of the in-person meeting requirement; proof of the petitioner's United States citizenship and divorce decree from her prior marriage; and a birth certificate, and Biographic Information sheet (Form G-325) for the beneficiary.

On March 27, 2002, the petitioner submitted everything requested except for the beneficiary's photograph, completed Form G-325, and birth certificate. Accordingly, the director denied the petition for failure of the petitioner to provide all of the supporting documentation required.

On appeal, the petitioner states that the documentation previously required was inadvertently omitted from the petition. In support of the appeal, the petitioner submits the beneficiary's photograph, Form G-325, and birth certificate. The Form G-325 submitted by the petitioner indicates that the petitioner and beneficiary were married in the Philippines on January 25, 2001, one year prior to the filing date of the petition.

Section 101(a)(15)(K) of the Act 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 bona fide 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 . . .

It was held in Matter of Souza, 14 I&N Dec. 1 (Reg. Comm. 1972) that both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the petition is filed.

The record reflects that the petitioner and beneficiary are already married. Therefore, the petitioner has failed to establish that the beneficiary qualifies as the fiance(e) of a United States citizen as of the date of filing the petition on March 21, 2002.

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. Accordingly, the appeal will be dismissed.

It is noted that the petitioner may wish to file a Petition for Alien Relative (Form I-130) on behalf of the beneficiary, to classify him as the spouse of a United States citizen, in accordance with the regulations and instructions regarding such petitions.

**ORDER:** The appeal is dismissed.