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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

File: [REDACTED] Office: VERMONT SERVICE CENTER
(EAC 02 194 50286 relates)

Date: NOV 13 2003

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

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 Citizenship and Immigration Services (CIS) 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 is now on appeal before the Administrative Appeals Office (AAO). 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 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 failed to establish that he and the beneficiary had 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. The director also found that the petitioner had failed to submit evidence that he was legally free to marry the beneficiary at the time the petition was filed. Specifically, the evidence presented did not establish that the petitioner had ever obtained a final divorce from his first spouse, Sheryl Delisle.

Section 101(a)(15)(K) of the Act defines "fiancé(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 fiancé(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. . . .

The petitioner filed the Petition for Alien Fiancé(e) (Form I-129F) on May 15, 2002. Therefore, the petitioner must establish that he was legally free to marry the beneficiary on that date and that he had met the beneficiary during the two-year period prior to that date.

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.

In response to Question #19 on the Form I-129F, the petitioner indicated that he had met the beneficiary while on a business trip to the Philippines, but did not specify the date of that meeting. In support of the petition, the petitioner submitted photocopies of a China Airlines ticket issued for travel from New York to the Philippines and return, issued on March 14, 2002. However, he indicated that he had cancelled that trip due to safety concerns.

The director requested the petitioner to submit additional documentation and information concerning the date and place of the parties' last meeting. The director noted that if the petitioner feared travel to the Philippines, he could have met the beneficiary in a third country. The director also requested the petitioner to submit evidence of the termination of his marriage to his first spouse, [REDACTED]

In response to the director's request, the petitioner failed to submit any information or evidence to establish that he had, in fact, ever traveled to the Philippines to meet the beneficiary during the requisite two-year period. Furthermore, he did not explain why he and the beneficiary could not have met in a third country. The petitioner also failed to submit evidence of the termination of his marriage to Sheryl Delisle.

On appeal, the petitioner submits the evidence required to establish that his marriage to Sheryl Delisle was legally terminated on February 7, 2002. The petitioner also states that he would suffer financial hardship if he were to travel to a country other than the Philippines to meet the beneficiary. The petitioner specifically mentions that there is religious violence in Nigeria, his place of birth.

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 § 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.

Subsequent to filing the appeal, the petitioner submitted additional letters and documentation to the director complaining about the abuses he has suffered with regard to his efforts to have the beneficiary join him in the United States. The information submitted reflects that the petitioner traveled to the Philippines in May 2003 to meet the beneficiary. The information also indicates that the petitioner and the beneficiary may, in fact, now be married.

It is important to emphasize that the regulation at § 214.2(k)(2) requires the petitioner to prove that he last met the beneficiary no more than two years *prior* to the filing date of the petition. In the instant case, the relevant two-year period is May 15, 2000 to May 15, 2002. The evidence submitted on appeal reflects that the petitioner visited the beneficiary in May 2003, one year *after* having filed the petition. Although the petitioner and beneficiary have met, the evidence submitted reflects that the meeting did not occur within the relevant two-year period.

After a thorough review of the record, it is concluded that the petitioner has failed to establish that he and the beneficiary personally met within the time period specified in section 214(d) of the Act, or that extreme hardship or unique circumstances exist to qualify him for a waiver of the statutory requirement. The expenses required in traveling to a foreign country are normal difficulties encountered in complying with the requirement and are not considered extreme hardship. Therefore, the appeal will be dismissed.

Pursuant to 8 C.F.R. § 214.2(k)(2), the denial of the petition is without prejudice. Now that the petitioner and the beneficiary have met, 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.

It is noted that if the petitioner and the beneficiary are now married, the petitioner may wish to file a Form I-130, Petition for Alien Relative, on behalf of the beneficiary in order to classify her as the spouse of a United States citizen. The Form I-130 should be submitted in accordance with the regulations and instructions regarding such petitions.

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.