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**U.S. Citizenship
and Immigration
Services**

D6

AUG 31 2005

FILE:

[REDACTED]
LIN 03 173 51781

Office: NEBRASKA SERVICE CENTER

Date:

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 of the Administrative Appeals Office 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant petition was denied and a subsequent motion to reopen was rejected by the Acting Director, Nebraska Service Center. The motion to reopen is now on appeal before the Administrative Appeals Office (AAO). 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 Vietnam, 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 petition was denied because the record did not establish that the petitioner and beneficiary had met during the two-year period immediately preceding the filing of the Form I-129F, as required by section 214(d) of the Act. The petitioner also failed to establish that compliance with the meeting requirement would have imposed an extreme hardship on him or would have violated the customs of the beneficiary's culture or social practice. In response, the petitioner filed a motion to reopen. The acting director rejected the petitioner's motion as it was received more than 30 days following the denial of the Form I-129F, and provided no excusable reason for the petitioner's delay in submitting it. *Decision of the Acting Director*, dated November 22, 2004.

Pursuant to 8 C.F.R. § 103.5(a)(1)(i):

[A]ny motion to reopen a proceeding before the Service filed by an applicant or petitioner, 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 was beyond the control of the applicant or petitioner.

The record indicates that the acting director issued his denial of the Form I-129 on March 23, 2004. On August 26, 2004, the director returned a motion to reopen submitted by the petitioner, as it was unsigned. As a result, the instant motion to reopen was not received by the Service Center until September 16, 2004, 176 days after the director denied the petition. Therefore, the record establishes that the petitioner's motion to reopen was untimely filed. 8 C.F.R. § 103.5(a)(1)(i).

On appeal, the petitioner states that his submission of the motion to reopen was late because he had to plan a trip to Vietnam to meet the beneficiary, including buying his ticket, requesting leave from his employment and arranging for the care of his mother. However, the petitioner's travel preparations do not excuse his failure to file a timely motion. He has not established that the delayed filing of the motion was reasonable and beyond his control. Accordingly, the petitioner's appeal is dismissed. His motion to reopen is rejected as untimely filed.

The burden of proof in these proceedings rests solely with the petitioner. See Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.