

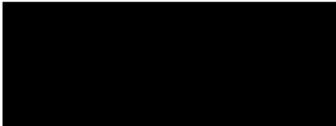


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U.S. Department of Justice
Immigration and Naturalization Service

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

Date: JUL 16 2001



Public copy

File: [Redacted]

Office: VERMONT SERVICE CENTER

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

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

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenly
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 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).¹

The director denied the petition after determining that the petitioner and the beneficiary had not personally met within the two years prior to the petition being filed as required by 8 C.F.R. 214.2(k)(2). In reaching this conclusion, the director found that the petitioner's failure to comply with the regulatory requirement was not the result of extreme hardship to the petitioner, or unique circumstances.

On appeal, the petitioner submits a statement.

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 fiance 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 fiancée 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 Petition for Alien Fiance(e) (Form I-129F) was filed with the Service on December 8, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on December 8, 1998 and ended on December 8, 2000.

The record reflects that the petitioner and the beneficiary have

¹ It is noted that this is the second petition filed by the petitioner in the beneficiary's behalf. The director denied the first petition on October 25, 1999.

never met in person. According to the record, the petitioner and the beneficiary began corresponding with each other in 1994. The petitioner has been incarcerated in Massachusetts since approximately October 1998.

The petitioner believes that his incarceration should compel the director to waive the requirement of a personal meeting. The petitioner claims that he and the beneficiary have a bonafide intent to marry and that it is his constitutional right to marry. The petitioner claims that his meeting the beneficiary without an approved I-129F petition would be an impossibility, as the earliest possible time he could leave the United States is the year 2013. The petitioner also states that he suffers from hepatitis-C, a chronic infection of the liver.

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 with the regulation 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.

The reason for the petitioner's inability to travel to the Philippines during the period of time in question was his incarceration. According to the petitioner, he is currently serving an 8-10 year jail sentence, with a 6-year period of parole after his jail sentence is completed. Although, the petitioner has not presented any documentary evidence of this sentence; nevertheless, the record contains sufficient evidence that the petitioner was imprisoned during the December 8, 1998 through December 8, 2000 time period.

The petitioner and the beneficiary have regularly corresponded and intend to marry; nevertheless, these reasons do not, by themselves, persuade the Service to find that the petitioner's incarceration amounted to extreme hardship to him. The petitioner's incarceration rendered him unable to travel to the Philippines during the requisite period; however, it was a situation that the petitioner had the ability to control. Furthermore, the petitioner's incarceration and subsequent parole are of limited duration.

Concerning the petitioner's claim that his hepatitis-C infection would make travel impossible, our consideration of this claim is moot, as the petitioner's incarceration would have precluded him from travel despite this illness. Nevertheless, the seriousness of the petitioner's disease and its impact on the petitioner's ability to travel cannot be determined, as the petitioner did not present any documentary evidence from medical experts concerning his illness. The petitioner claims that he is in the chronic stage of hepatitis-C infection; however, he only presented the results from a laboratory test that indicated that he tested positive for hepatitis-C. Therefore, the petitioner's hepatitis-c infection, while unfortunate, does not, by itself, qualify the petitioner for a waiver of the requirement of a personal meeting between him and the beneficiary.

Finally, the petitioner has stated on appeal that the Service must approve the instant petition because it is his right as a U.S. citizen to marry. The Service notes the petitioner's disapproval with our decision; however, unless the petitioner can meet the eligibility requirements for this nonimmigrant visa petition, the petition must be denied.

The petitioner has failed to establish that he and the beneficiary have personally met as required by section 214(d) of the Act, and that extreme hardship or unique circumstances qualify him for a waiver of the statutory requirement. Pursuant to 8 C.F.R. 214.2(k)(2), the denial of this petition is without prejudice, and the petitioner may file a new I-129F petition after he and the beneficiary have met in person.

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.