U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 1 2001

IN RE: Petitioner:
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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas 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).

The director denied the petition after determining that the petitioner and the beneficiary had not previously met in person, 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 evidence the petitioner submitted concerning the termination of a prior marriage was not sufficient.

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 fiancee 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 fiancee 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...

The petition was filed with the Service on April 24, 2000. Therefore, the petitioner and the beneficiary were required to have met during the period that began on April 24, 1998 and ended on April 24, 2000.

On the Petition for Alien Fiance(e) (Form I-129F), the petitioner specified that he and the beneficiary had not personally met, and the petitioner submitted only a separation agreement as proof that he terminated a prior marriage. Therefore, on May 11, 2000 the director sent the petitioner a notice of his intent to deny the I-129F petition. The petitioner failed to respond within 30 days, so the director denied the petition.

On appeal, the petitioner presents a final judgment and decree of a divorce, which was entered into by the petitioner and his former wife on December 3, 1990. The petitioner also presents evidence that on August 23, 2000, he travelled to the Philippines to meet the beneficiary. The evidence the petitioner presents includes a copy of his flight itinerary, the receipt for his airline ticket, a boarding pass, and photographs of him and the beneficiary together.

The evidence the petitioner submits on appeal regarding the termination of his prior marriage is sufficient. The final judgment and decree indicates that the petitioner and his former wife were granted a *divorce a vinculo matrimonii* in December 1990, approximately 9 years prior to the filing of the I-129F petition. Nevertheless, the evidence that the petitioner submits on appeal concerning the meeting that took place between the petitioner and the beneficiary is not persuasive in overcoming the director's objections.

Section 214(d) of the Act specifically requires the petitioner to prove that he and the beneficiary had met in person within two years of filing the petition. In the instant case, the relevant two-year period is April 24, 1998 to April 24, 2000. According to evidence the petitioner submits on appeal, the petitioner and beneficiary met on August 25, 2000 (approximate date), 4 months after the filing of the petition.

As the meeting between the petitioner and the beneficiary did not occur within two years before filing the petition, the appeal must be dismissed. 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 now that 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.