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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
(SRC 02 220 51419 relates)

Date: FEB 05 2003

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:

[REDACTED]

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 P. Wiemann, 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 native of Vietnam who naturalized as a citizen of the United States on May 17, 2002. He seeks to classify the beneficiary, a native and citizen of Vietnam, 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 had 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.

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 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
[emphasis added]

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) on July 10, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on July 10, 2000 and ended on July 10, 2002.

With the initial filing of the petition, the petitioner indicated that he and the beneficiary had met for the first time in Vietnam in 1994, prior to the petitioner's immigration to the United States as a refugee. He stated that they had a child together in 1995 and that the last time he met the beneficiary was in Vietnam from September 30, 1999 through July 27, 2000. The director determined that based on the evidence contained in the record, the petitioner had failed to establish that he had last met the beneficiary within the two-year period immediately preceding the filing date of the petition. Accordingly, the director denied the petition.

On appeal, the petitioner asserts that he returned to the United States on July 27, 2000 and submitted the petition on the

beneficiary's behalf on July 10, 2002, 17 days within the required two-year time period. In support of his assertion, the petitioner submits a copy of the identification page from a reentry permit #001265001, issued to him on May 4, 1999. He also submits a copy of a page from a document #01216042, indicating readmission to the United States at Los Angeles on July 27, 2000.

It is noted that the book number of the petitioner's reentry permit does not match the number on the document showing readmission into the United States on July 27, 2000. Furthermore, additional evidence contained in the record including boarding passes, airline itineraries, photographs of the couple together, and an airline ticket receipt do not sufficiently establish the petitioner's assertion that he returned to the United States from Vietnam on July 27, 2000. The airline itinerary indicates that the petitioner was scheduled to return on May 25, 2000. The boarding passes and airline ticket receipt do not show a year, and the photographs do not have date stamps. It is determined that the applicant has failed to submit sufficient credible documentary evidence of having met the beneficiary within the two-years immediately preceding the filing date of the petition. Therefore, the appeal will be dismissed.

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.