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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 10 2003
(EAC 02 121 50558 relates)

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained. The decision of the director will be withdrawn and the application will be approved.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Ghana, 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 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.

Section 101(a)(15)(K) of the Act 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 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) with the Service on January 19, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on January 19, 2000 and ended on January 19, 2002.

In response to Question #19 on the Form I-129F, the petitioner indicated that he had last met the beneficiary during a trip to Ghana and that they have a child together. In response to the director's request for additional information and evidence concerning the parties' last meeting, the petitioner submitted several copies of his passport pages indicating that he went to Ghana in December 1999. The director found that the personal meeting between the petitioner and the beneficiary was not within

the two-year period immediately preceding the filing date of the petition and denied the petition accordingly.

On appeal, the petitioner submits documentation including an additional page from his passport and a letter explaining his relationship with the beneficiary.

A thorough review of all of the documentation contained in the record of proceeding reflects that the applicant arrived in Ghana on December 16, 1999, departed on January 25, 2000, and arrived in the United States on January 26, 2000. Less than nine months after the petitioner returned to the United States from Ghana, the beneficiary gave birth to a child in Ghana on October 11, 2000. The child's birth certificate, which was not registered until January 28, 2002, contains the applicant's name as the father. The birth certificate notes the father's occupation as a medical practitioner, however, the petition indicates that he is studying for a master's degree in public health in the United States.

In the instant case, the record contains sufficient documentary evidence to establish that the petitioner visited the beneficiary in Ghana from December 16, 1999 through January 25, 2000, a time period that is within two years immediately prior to filing the petition on January 19, 2002. Therefore, the appeal will be sustained. The decision of the director will be withdrawn and the application will be approved.

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 met that burden.

ORDER: The decision of the director is withdrawn. The application is approved.