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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 14 2009
(SRC-02-254-52918 relates)

IN RE: Petitioner: [redacted]
Beneficiary:

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

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 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 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 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 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 petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on May 17, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 17, 2000 and ended on May 17, 2002.

In connection with the filing of the initial petition, the petitioner indicated that he and the beneficiary had gone to high school together. In response to the director's request for additional information concerning the parties' last meeting, the petitioner indicated that he knew the beneficiary in Ghana prior to moving to the United States and starting ninth grade. After moving to the United States, he states that he was a student and unable to afford a return trip to Ghana. He further states that he now has a

very good job with benefits and asks for a chance to bring the beneficiary to the United States to be with him.

On appeal, the petitioner states that he will be travelling to Ghana for "marriage rituals" with the beneficiary. He requests an additional 190 days extension for the date of filing the appeal in order to submit evidence of his travel.

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 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.

It is important to emphasize that the regulation at section 214.2(k)(2) requires the petitioner to prove that he last met the beneficiary no more than two years prior to the filing of the petition. In the instant case, the relevant two-year period is May 17, 2000 to May 17, 2002. According to the petitioner, he intends to meet the beneficiary at some time between August 2002 and February 2003, at least three months after the filing of the petition. Therefore, although the petitioner and beneficiary will have recently met, and possibly married, the meeting will not have occurred within the relevant two-year period. Therefore, the director's decision to deny the petition is affirmed.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of the petition is without prejudice. Once the petitioner and the beneficiary have met, the petitioner may file a new I-129F petition in the beneficiary's behalf so that the two-year period in which the parties are required to have met will apply. It should be noted that in the event that the petitioner and beneficiary lawfully marry during the petitioner's visit abroad, the petitioner should alternatively file a Petition for Alien Relative (Form I-130) on behalf of his wife in accordance with the regulations and instructions regarding such petitions.

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.