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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: VERMONT SERVICE CENTER Date: JAN 3 1 2003
(EAC 02 176 51448 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

INSTRUCTIONS:

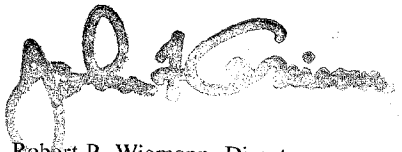
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 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 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 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 June 5, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on June 5, 2000 and ended on June 5, 2002.

In response to Question #19 on the Form I-129F, the petitioner indicated that he and the beneficiary had never met. In support of the petition, the petitioner submitted a letter explaining that he had planned on two separate occasions to travel to the Philippines to meet the beneficiary but that scheduling difficulties with his employment responsibilities had interfered. He stated that on the first occasion, he was required to remain at sea and unable to get time off. On the second, he had to take a required employment-

related course during a specific time period and did not have time to travel. The petitioner also stated that he has had difficulty scheduling a trip because he has high sugar levels, for which he has been prescribed medication, and is unable to obtain medical permission to travel unless his sugar level is stabilized. He further stated that he had been advised not to travel to the Philippines, especially alone, due to terrorism and kidnapping in that country.

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.

The regulation at section 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. Generally, a director looks at whether the petitioner can demonstrate the existence of circumstances that are (1) not within the power of the petitioner to control or change, and (2) likely to last for a considerable duration or the duration cannot be determined with any degree of certainty. Examples of such circumstances may include, but are not limited to, serious medical conditions or hazards to U.S. citizens to travel to certain countries.

On appeal, the petitioner submits a letter and documentation including evidence that he has purchased a home and will take possession of it in September 2002. He also submits an employment letter indicating that he is scheduled to return to work on October 4, 2002. The petitioner states that there is no doubt as to the intent of the parties to marry but that he has been busy and therefore unable to travel to the Philippines. He indicates that he always intended to escort the beneficiary to the United States to live, which would fulfill the in-person meeting requirement.

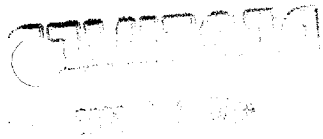
It is important to emphasize that the regulation at section 214.2(k)(2) requires the petitioner to prove that he last met the beneficiary no more than two years <u>prior to</u> the filing of the petition. In the instant case, the relevant two-year period is June 5, 2000 to June 5, 2002.

In the instant case, the reasons given by the petitioner for not having met the beneficiary within two years prior to filing the petition do not support a finding that compliance with the requirement would cause extreme hardship to the petitioner. The need to schedule travel around employment responsibilities and the

time required to travel to a foreign country are normal difficulties encountered in complying with the requirement and are not considered extreme hardship. Furthermore, the petitioner's desire not to travel to the Philippines does not preclude him from travelling to a third country to meet the beneficiary. It also does not preclude the beneficiary from travelling to the United States to visit the petitioner. Regulations do not dictate in which country the in-person meeting must take place. No evidence has been submitted by the petitioner to establish that his failure to comply with the regulation warrants a discretionary waiver.

The petitioner has failed to establish that he and the beneficiary have personally met within the time period specified in section 214(d) of the Act, or that extreme hardship or unique circumstances exist to qualify him for a waiver of the statutory requirement. Therefore, the appeal will be dismissed.

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. The petitioner will be required to submit evidence that he and the beneficiary have met within the two-year period that immediately precedes the filing of a new petition. Without the submission of documentary evidence that clearly establishes that the petitioner and the beneficiary have met in person during the requisite two-year period, the petition may not be approved unless the director grants a waiver of that requirement.

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.