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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 05 2003

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)

ON 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 fiancée 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 had failed to establish that he warranted a favorable exercise of discretion to waive this statutory requirement.

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 fiancé 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) on May 14, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on May 14, 2000 and ended on May 14, 2002.

In response to Question #19 on the Form I-129F, the petitioner indicated that he had met the beneficiary in person in March 2000 and that he had intended to travel to the Philippines in August 2001 to wed his fiancée but that he canceled his plans due to travel warnings.

On appeal, the petitioner states that he has been staying in touch with his fiancée and is committed to marrying her. He provided

additional evidence in the form of copies of e-mail communication between himself and his fiancée.

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.

In the instant case, the petitioner's stated reasons for needing a waiver are not persuasive. The travel warning expired on October 31, 2001. The petitioner provided no additional reasons as to why he had been unable to travel to the Philippines after the expiration of the travel warning. In addition, the petitioner has failed to establish that compliance with the requirement would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

The petitioner failed to overcome the director's objection to granting the petition. The regulations require that a petitioner meet his fiancé in the two-year period prior to filing the petition.

Pursuant to 8 C.F.R § 214.2(k)(2), the denial of this petition is without prejudice. The petitioner may file a new I-129F petition on behalf of the beneficiary. 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.