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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]

AUG 08 2003

FILE: [redacted] Office: California Service Center Date:
WAC 02 228 50847

IN RE: Petitioner:
Beneficiary: [redacted]

APPLICATION: 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 Bureau of Citizenship and Immigration Services (Bureau) 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, California Service Center, and is now before the Administrative Appeals Office 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 fiancee of a United States citizen, pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 101(a)(15)(K).

The director determined that, based upon the record, credible documentary evidence had not been submitted to establish that the petitioner and the beneficiary had met within two years before the date of filing the petition as required by section 214(d) of the Act. The director further determined that the petitioner had not established that he warrants the favorable exercise of the director's discretion to exempt this requirement, pursuant to 8 C.F.R. § 214.2(k)(2). The director, therefore, denied the petition.

On appeal, the petitioner claims that he was not able to meet the beneficiary in the Philippines because he received a letter from the Passport Office informing him that a passport could not be issued because he owes child support.

Section 101(a)(15)(K) of the Act defines a nonimmigrant in this category 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 admission, and the minor children of such fiancee or fiance accompanying him or following to join him.

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 2 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, except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person....

8 C.F.R. § 214.2(k)(2) provides that as a matter of discretion, the director may exempt the petitioner from the requirement that the parties have previously met only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice.

The petition was filed with the Service on July 8, 2002. Therefore, the petitioner and the beneficiary must have met in person between July 9, 2000 and July 8, 2002.

The record reflects that the petitioner and the beneficiary have not personally met. While the petitioner, on appeal, submits evidence to establish that his employer is withholding income from his earnings for child support, he failed to submit evidence to establish his claim that the Passport

Office refused to issue him a passport so that he may travel to the Philippines. Therefore, his claimed inability to comply with the requirement, pursuant to section 214(d) of the Act, does not constitute extreme hardship. Nor has the petitioner established that he warrants a discretionary waiver of the requirement, pursuant to 8 C.F.R. § 214.2(k)(2).

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. Accordingly, the appeal will be dismissed.

This decision is without prejudice to the filing of a new petition (Form I-129F) once the petitioner and the beneficiary have met in person, and within the two years of the date of filing the new petition.

ORDER: The appeal is dismissed.