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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: California Service Center Date: AUG 08 2003
WAC 02 239 51382

IN RE: Petitioner: [redacted]
Beneficiary:

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 and the beneficiary have now met in person. He submits evidence to establish his claim.

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....

The petition was filed with the Service on July 22, 2002. Therefore, the petitioner and the beneficiary must have met in person between July 23, 2000 and July 22, 2002.

The petitioner, on appeal, submits evidence to establish that he has since visited the beneficiary in the Philippines in January 2003. The petitioner and the beneficiary, however, did not meet within the two-year period prior to the filing of the petition, as required, pursuant to section 214(d) of the Act.

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, however, is without prejudice to the filing of a new petition (Form I-129F), accompanied by all documentary evidence and required fees, now that the petitioner and the beneficiary have met.

ORDER: The appeal is dismissed.