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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FEB 28 2003

File: [redacted] Office: TEXAS SERVICE CENTER Date:
(SRC 02 201 53638 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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 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 Act 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. . . .

The petitioner filed the Petition for Alien Fiance(e) (Form I-129F) with the Service on June 26, 2002. Therefore, the petitioner and the beneficiary were required to have met during the period that began on June 26, 2000 and ended on June 26, 2002.

In response to Question #19 on the Form I-129F, the petitioner stated that he and the beneficiary had maintained a household, both together and apart, since December 1995. In response to the director's request for additional information and evidence concerning the parties' last meeting, the petitioner submitted a letter dated August 9, 2002 and documentation indicating that he had last seen the beneficiary in the Philippines in April 1998 and had not returned to the Philippines since that time because of an vehicular accident in August 1997 causing multiple injuries below his right knee; illness, including gall bladder stones with cholecystitis for which he had surgery in December 1997; and financial hardships. He further stated that he and the beneficiary have a five-year-old United States citizen son together who resides in the Philippines with the beneficiary.

On appeal, the petitioner submits a letter dated September 2, 2002 asserting that he is supporting two households (his and the beneficiary's) on an income of $15,000 and that to spend $3,000 to $4,000, plus loss of income, on a trip to the Philippines would be an extreme hardship for him. He also indicates that due to blood-clotting problems associated with his accident in 1997, he is afraid to fly because recent research has shown that blood clots develop on long, cramped flights. He states that the decision to deny this petition is narrow and arbitrary and that had he and the beneficiary been living with their son in Texas for as long as they cohabited in the Philippines, they would have been considered to have a common law marriage.

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.

In the instant case, the petitioner has not established that he warrants a favorable exercise of discretion to waive the requirement of a personal meeting with the beneficiary during the period that began on June 26, 2000 and ended on June 26, 2002 on the basis of extreme hardship to the petitioner. The time and expense required to travel to a foreign country are normal difficulties encountered in complying with the requirement and are not considered extreme hardship. In addition, there is no documentary evidence contained in the record to indicate that the petitioner is precluded from traveling due to medical reasons.

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 again in person, 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 should 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 such 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.