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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 12 2003
(WAC 01 124 53171 relates)

IN RE: Petitioner: [redacted]
Beneficiary

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

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 Bureau of Citizenship and Immigration Services (Bureay) 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 a subsequent appeal was dismissed by Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed.

The petitioner is a citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, 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. The director further 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 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 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 March 8, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on March 8, 1999 and ended on March 8, 2001.

With the initial filing of the petition, the petitioner indicated that he had not met the beneficiary in person because he is disabled and not able to make a long journey to China. The petitioner did not submit any medical evidence to support his claim nor did he explain why the beneficiary could not travel to meet him. In response to the director's request for additional information, the applicant failed to provide any evidence of his disability or otherwise establish that his failure to meet the beneficiary warranted a favorable exercise of discretion to waive

the statutory requirement.

On appeal, the petitioner reasserted that he is disabled and cannot travel. However, no new information or documentation was submitted to support his appeal.

On motion, the petitioner submits a letter again asserting that he is unable to visit the beneficiary in China because of his disability. He further indicates that evidence of his disability will be submitted. However, no evidence has been received in the more than six months subsequent to the filing of the motion.

With regard to motions to reopen, 8 C.F.R. § 103.5(a)(2) states, in pertinent part that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.[1]

A review of the documentation submitted on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen will be dismissed.

With regard to motions to reconsider, 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner has failed to submit any evidence that would meet the requirements of a motion to reconsider. Therefore, the petitioner's motion to reconsider will be dismissed.

8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

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[1] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

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 motion is dismissed.