



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF P-K-D-

DATE: JULY 11, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a U.S. citizen, seeks the Beneficiary's admission to the United States under the fiancé(e) visa classification. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K) (the "K-1" visa classification). A U.S. citizen may petition to bring a fiancé(e) to the United States in K-1 status for marriage.

The Director of the California Service Center denied the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), concluding that the Petitioner did not establish that he merits a discretionary waiver of the two-year personal meeting requirement. She also determined that he is subject to a statutory bar based on a previously filed fiancé(e) petition and that he did not establish justification for a discretionary waiver of the bar.

On appeal, the Petitioner requests a waiver of the two-year personal meeting requirement based upon the Beneficiary's religious and custom beliefs and submits supporting attestations from her father and her temple's pundit. He also requests a discretionary waiver of the relevant statutory bar.

Upon *de novo* review, we will sustain the appeal.

I. LAW

Section 214(d)(1) of the Act states that a fiancé(e) petition can be approved only if the petitioner establishes that the parties have previously met in person within two years before the date of filing the fiancé(e) 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 90 days after the beneficiary's arrival. U.S. Citizenship and Immigration Services (USCIS) maintains the discretion to waive the requirement of an in-person meeting between the two parties if compliance would either result in extreme hardship to the petitioner, or violate strict and long-established customs of the beneficiary's foreign culture or social practice. *See* section 214(d)(1); 8 C.F.R. § 214.2(k)(2).

To help ensure that fiancé(e) visas are reserved for *bona fide* relationships, the Act precludes approval of a petition if a petitioner has: (1) previously filed a fiancé(e) petition for two or more

foreign national fiancé(e)s before filing the instant fiancé(e) petition, or (2) less than two years have passed since the filing date of a previously-approved fiancé(e) petition.¹ Section 214(d)(2)(A) of the Act. It further provides a discretionary waiver of these limitations “if justification exists.” There are no implementing regulations for these provisions, but a USCIS memorandum describes when the IMBRA limitations apply, how one may request a waiver of the limitations, and the factors that USCIS will consider in determining whether a discretionary waiver is warranted.²

II. ANALYSIS

In March 2016, the Petitioner filed a fiancé(e) petition on behalf of the Beneficiary. USCIS approved the petition in June 2016 and forwarded the approval to the U.S. Embassy in India, with a validity period of four months. A consular officer interviewed the Beneficiary in December 2016 but did not issue a nonimmigrant visa to her. Instead, the officer returned the petition to USCIS for recommended revocation upon finding that both parties had not demonstrated a *bona fide* relationship.³ The consular officer noted that the Beneficiary could not provide a credible explanation for why she and the Petitioner had not met in-person or married since their [REDACTED] 2014 engagement or produce other evidence of a *bona fide* relationship. The officer also noted that the Beneficiary’s visa had expired at the time of the consular interview.

On March 16, 2017, the Petitioner filed a second fiancé(e) petition on behalf of the same Beneficiary. The Director issued a request for evidence (RFE) seeking documentation that the Petitioner had met the Beneficiary in person and advising him of the two situations in which a discretionary waiver of this requirement may be granted.⁴ The Director also advised the Petitioner that this petition was subject to an IMBRA limitation based on the previously approved fiancé(e) petition that he filed less than two years earlier. Thus, she advised the Petitioner that, in order for the instant petition to be approved, he would need to submit a written request for a discretionary waiver of this limitation along with evidence in support of his request.

In response to the RFE, the Petitioner requested a waiver of the in-person meeting requirement, stating that fulfilling it would cause him extreme hardship. He also requested a discretionary waiver of the IMBRA limitation and provided additional phone records as evidence of continuous contact and an

¹ These provisions were enacted in the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006). Title VII of VAWA 2005 is entitled “Protection of Battered and Trafficked Immigrants,” and contains Subtitle D, “International Marriage Broker Regulation.” Accordingly, these limitations are commonly known as IMBRA provisions, for the International Marriage Broker Regulation Act.

² See Memorandum from Michael Aytes, Associate Director for Domestic Operations, USCIS, HQPRD 70/6.2.11, *International Marriage Broker Regulation Act Implementation Guidance 2* (July 21, 2006). <https://www.uscis.gov/laws/policy-memoranda>.

³ The Director did not revoke the petition. Instead, in February 2017 she notified the Petitioner that the petition was returned to USCIS without issuance of the requested K-1 visa, and that the approved petition’s validity period had since expired and “all USCIS action on this petition is concluded.”

⁴ As noted above, USCIS may waive the requirement of an in-person meeting between the two parties if compliance would either result in extreme hardship to the petitioner, or violate strict and long-established customs of the beneficiary’s foreign culture or social practice. See section 214(d)(1); 8 C.F.R. § 214.2(k)(2).

established relationship with the Beneficiary. The Director then denied the petition, determining that the Petitioner had not shown sufficient grounds for waiving the in-person meeting requirement. She also found that while the Petitioner requested a waiver of the IMBRA limitation, he had not addressed the reasons for which the State Department declined to issue the K-1 visa⁵ and therefore that had not established that he merited a discretionary waiver of the limitation.

Upon review of the record, including evidence submitted on appeal, we find that a waiver of the in-person meeting is warranted as such compliance would violate the Beneficiary's religious practices and customs. We also determine that the Petitioner has established that he merits a discretionary waiver of the IMBRA limitation.

A. Waiver of In-Person Meeting Requirement

In the instant case, the Petitioner was required to have met the Beneficiary in person between March 16, 2015, and March 16, 2017, or to request a waiver of this requirement. The record contains no evidence that such a meeting occurred within the relevant timeframe.⁶ On appeal, the Petitioner requests a discretionary waiver of the personal meeting requirement as compliance would violate strict and long-established customs of his fiancée's foreign culture or social practice. In support, he provides a letter from the Beneficiary's temple attesting that "After the engagement event and following pre marriage meeting day, the prospective bride and groom are allowed only to talk through phone, exchanging messages, letters, greetings ... but are not permitted to meet in person." This letter also notes that meeting in person after the pre marriage ceremony would be a violation of the Beneficiary's [REDACTED] caste. The Petitioner also submits a statement from the Beneficiary's father confirming the Petitioner's engagement to his daughter and stating that a second meeting between the Beneficiary and his daughter would violate her faith's customs. This evidence supports the Petitioner's assertion that a second in-person meeting between himself and his fiancée would violate customs of her social practice. We therefore find that the Petitioner has demonstrated that he merits a discretionary waiver of the two year in-person meeting requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2).

B. Waiver of IMBRA Limitations

The Petitioner is subject to the IMBRA limitations because his previously approved fiancé(e) petition for the same Beneficiary was filed within two years of the instant petition. As noted above, we may, in our discretion, waive the IMBRA limitations if justification exists.⁷ To establish that justification exists for a waiver, a petitioner should specifically describe the reasons for filing multiple fiancé(e)

⁵ We note that the Director did not inform the Petitioner of the consular officer's reasons for declining to issue the visa either in her decision, or in the preceding RFE.

⁶ The record establishes that the Beneficiary and Petitioner met in person in August 2014. It includes, among other things, copies of photographs of the Petitioner and Beneficiary together, his boarding passes for the flight to India, and his tourist visa for the trip. On appeal, the Petitioner provides duplicates of these photographs.

⁷ See section 214(d)(2)(B) of the Act.

petitions and explain the outcome of those petitions. In addition, the factors we consider include, but are not limited to:

- Whether unusual circumstances exist, such as death or incapacity of the prior beneficiary(ies).
- Whether a petitioner appears to have a history of domestic violence.
- Whether it appears a petitioner has a pattern of: (1) filing multiple petitions for different beneficiaries at the same time, (2) filing and withdrawing petitions, or (3) obtaining approvals of petitions every few years.⁸

To merit the waiver, and ultimately to establish eligibility, a petitioner must overcome any negative factors that call into question whether the petitioner had a *bona fide* intention to marry the beneficiary(ies).

Here we find that the Petitioner has sufficiently demonstrated that a discretionary waiver of the IMBRA limitation is warranted. The totality of the record contains evidence sufficient to overcome the concerns raised by the consular officer about the *bona fide* nature of the Petitioner and Beneficiary's relationship. Specifically, it includes phone bills and numerous printouts of text messages documenting communications between the Petitioner and Beneficiary dating from November 2015-February 2016, August-September 2016, December 2016-February 2017, and October-November 2017. These materials corroborate the Petitioner's assertion that he and the Beneficiary maintained ongoing contact of a romantic nature, even after the consulate denied his fiancée's visa. Further, on appeal, the Petitioner provides statements from the Beneficiary's father and the pundit at her temple attesting to the meeting and subsequent engagement of the parties and explaining the absence of in-person meetings following this engagement.

We find the above-noted documents relevant to address the specific concern noted by the consular officer regarding the lack of additional in person meetings between the two parties, and to demonstrate their ongoing relationship. Furthermore the record does not indicate that the Petitioner has a history of domestic violence, nor has he exhibited a concerning pattern of filing fiancé(e) petitions. Therefore, based upon the new evidence presented on appeal in conjunction with materials already in the record, we are satisfied that the Petitioner has overcome any negative factors, that he and the Beneficiary have a *bona fide* relationship, and that he merits a waiver of the two-year IMBRA limitation.

III. CONCLUSION

The Petitioner has established that discretionary waivers both of the two-year in person meeting requirement and of the IMBRA limitation are warranted.

⁸ See Aytes Memorandum, *supra*, at 3.

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ORDER: The appeal is sustained.

Cite as *Matter of P-K-D-*, ID# 1354064 (AAO July 11, 2018)