



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9435798

Date: AUG. 10, 2020

Appeal of California Service Center Decision

Form I-129F, Petition for Alien Fiancé(e)

The Petitioner, a U.S. citizen, seeks classification of the Beneficiary as a “K-1” nonimmigrant under the fiancé(e) visa classification at section 101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i), of the Immigration and Nationality Act (the Act). The Director of the California Service Center denied the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), concluding the Petitioner is subject to the filing limitations under the International Marriage Broker Regulation Act (IMBRA) of 2005, Pub. L. No. 109-162, and that he did not establish that he merits a favorable exercise of discretion to exempt him from the filing limitations.¹ The Petitioner filed an appeal of the Director’s decision. The Administrative Appeals Office reviews the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter for further consideration.

I. LAW

IMBRA, codified at section 214(d)(2) of the Act, precludes approval of a petition if a petitioner has previously filed a fiancé(e) petition for two or more alien fiancé(e)s before filing the instant fiancé(e) petition, or less than two years have passed since the filing date of a previously-approved fiancé(e) petition. Section 214(d)(2) of the Act.

A discretionary waiver is available to waive the applicable time and/or numerical limitations if justification exists, except where the petitioner has a history of violent criminal offenses against a person or persons. Section 214(d)(3)(B) of the Act. Factors considered in the adjudication of the discretionary waiver include, but are not limited to:

- Whether unusual circumstances exist (e.g. death or incapacity of prior beneficiary(ies));
- Whether the petitioner appears to have a history of domestic violence;

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 VIII 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.

- Whether it appears the petitioner has a pattern of filing multiple petitions for different beneficiaries at the same time, of filing and withdrawing petitions, or obtaining approvals of petitions every few years.

Memorandum from Michael Aytes, Associate Director for Domestic Operations, U.S. Citizenship and Immigration Services (USCIS), HQPRD 70/6.2.11, International Marriage Broker Regulation Act Implementation Guidance (July 21, 2006), at 3, <http://www.uscis.gov/laws/policy-memoranda>. The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The record reflects that prior to the filing of the instant petition, the Petitioner previously filed two fiancé(e) petitions for two different beneficiaries in the past. The current petition is therefore subject to the limits imposed by IMBRA. The Director issued a request for evidence (RFE), notifying the Petitioner that he must request a waiver of the filing limitations and submit evidence to show that he merits a favorable exercise of discretion for a grant of such a waiver. The Petitioner responded to the RFE, requested a waiver of the filing limitations, and submitted a personal statement in support thereof, in which he described the circumstances surrounding his prior relationships with each beneficiary and why the relationships ended. The Director denied the petition, concluding the evidence of record did not demonstrate that discretion should be favorably exercised to grant the waiver. The Director noted that although the Petitioner's statement was specific and described unusual circumstances, it was not persuasive because the Petitioner did not submit independent evidence in support of his waiver request.

On appeal, the Petitioner, through counsel, maintains that he does not require a waiver of the IMBRA filing limitations because both provisions of section 214(d)(2)(A) must exist for USCIS to impose the waiver requirement and that USCIS' interpretation of section 214(d)(2) of the Act is erroneous. Contrary to his argument, the Petitioner is subject to the filing limitations imposed by IMBRA. Section 214(d)(2) of the Act requires, prior to approving a petition, the Secretary of Homeland Security to verify that: "(i) the petitioner has not, previous to the pending petition, petitioned . . . with respect to two or more applying aliens; and (ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition." The clauses are listed in the conjunctive, and the Secretary must verify both prior to approving a petition. *Id.* Thus, if a petitioner has filed two or more fiancé(e) petitions at any time in the past for two or more beneficiaries, or had an approved fiancé(e) petition that was filed within two years of the filing of the current petition, he or she must request a waiver. *Id.*; *see also* Form I-129F, Instructions for Petition for Alien Fiancé(e), at 7 (rev. date 4/10/17) (reiterating the requirements of section 214(d)(2) of the Act). In this case, the Petitioner has filed two fiancé(e) visa petitions in the past for two beneficiaries, and therefore must request a waiver of the filing requirements.

Nonetheless, on appeal, the Petitioner again requests a waiver of the filing requirements and submits additional evidence in support, including personal statements from himself and the Beneficiary, copies of conversations between the two, photographs, and financial records. The additional evidence demonstrates the *bona fide* nature of the relationship between the Petitioner and Beneficiary and the Petitioner's personal statement reiterates the circumstances surrounding his filing of multiple fiancée

petitions. Because this evidence is relevant to the Director's ground for denial of the fiancé(e) petition, and based on the Petitioner's renewed request for a waiver, the matter is remanded for further consideration of whether justification exists to waive the filing limitations imposed by IMBRA.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.