U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4046710

Date: DEC. 30, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, a U.S. citizen, seeks the admission of the Beneficiary, a citizen of the Philippines, as a "K-1" nonimmigrant under the fiancé(e) visa classification at section 101(a)(15)(K)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(i). The Director of the Vermont Service Center (Director) denied the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition). The matter is now before us on appeal. On appeal, the Petitioner submits a statement and additional evidence. The Administrative Appeals Office reviews the questions in this matter *de novo*. *Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Subject to subsections (d) and (r) of section 214 of the Act, 8 U.S.C. § 1184(d) and (r), nonimmigrant K classification may be accorded to a foreign national who "is the fiancée or fiancé 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 . . . ." Section 101(a)(15)(K)(i) of the Act. However, U.S. Citizenship and Immigration Services (USCIS) may not approve a fiancé(e) petition filed by a U.S. citizen who has been convicted of a "specified offense against a minor"[1] unless USCIS, "in [its] sole and unreviewable discretion, determines that the citizen poses no risk to the [intended fiancé(e)]." Sections 101(a)(15)(K)(i) and 204(a)(1)(A)(viii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(viii). The burden is on the U.S. citizen to clearly demonstrate his rehabilitation and to show, beyond any reasonable doubt, that he poses no risk to the safety and well-being of the beneficiary and any derivative child(ren). Memorandum from Michael Aytes, Associate Director for Domestic Operations, USCIS, HQDOMO 70/1-P, *Guidance for Adjudication of Family-Based Petitions and I-129F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006* (Feb. 8, 2007), http://www.uscis.gov/laws/policy-memoranda.

[1] The term "specified offense against a minor" is defined as an offense against a minor involving any of the following: an offense (unless committed by a parent or guardian) involving kidnapping or false imprisonment; solicitation to engage in sexual conduct or practice prostitution; use in a sexual performance; video voyeurism as described in section 1801 of title 18, United States Code; possession, production or distribution of child pornography; criminal sexual conduct involving a minor or the use of the Internet to facilitate or attempt such conduct; or any conduct that by its nature is a sex offense against a minor. Section 111 of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, 120 Stat. 587 (2006).

Section 214(d)(1) of the Act provides that a fiancé(e) petition can be approved only if the petitioner establishes, amongst other requirements, that the parties have previously met in person within two years before the date of filing the fiancé(e) petition. The implementing regulation at 8 C.F.R. § 214.2(k)(2) reiterates that the petitioner must "establish to the satisfaction of the director that the petitioner and K-1 beneficiary have met in person within the two years immediately preceding the filing of the petition." The regulation further states that, as a matter of discretion, the requirement of an in-person meeting between the two parties may be waived 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. *Id.* The petitioner bears the burden of establishing eligibility pursuant to section 291 of the Act, 8 U.S.C. § 1361, and must establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

On [redacted] 2006, the Petitioner was convicted of criminal sexual conduct in the fourth degree, a violation of section 750.520e(1)(a) of the Michigan Compiled Laws Annotated (Mich. Comp. Laws Ann.). At the time of conviction, the statute provided that:

> "A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist: (a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person."

Mich. Comp. Laws Ann. § 750.520e(1)(a) (West 2003). For the conviction, the Petitioner was sentenced to five years of probation and required to pay a fine.

In September 2014, the Petitioner filed the instant fiancé(e) petition. With the petition, the Petitioner submitted a psychological evaluation and other documents. In November 2017, the Director issued a notice of intent to deny (NOID), informing the Petitioner that his criminal records indicated that he had been convicted of a specified offense against a minor. The Director requested police reports and court records related to the Petitioner's offense, as well as copies of all his state sex offender registration records and evidence that he poses no risk to the Beneficiary. The Director also noted that the record did not contain evidence that the Petitioner and Beneficiary met in person within the two years immediately preceding the filing of the petition or that complying with this requirement 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.

The Petitioner responded to the NOID with additional evidence, including several affidavits, financial records, and an updated letter from the licensed psychologist who performed the original psychological evaluation on the Petitioner, among other documents. Notably, the updated letter confirmed that the Petitioner was originally rated in the "low risk" of recidivism category. After considering the record as a whole, the Director denied the petition, determining that the Petitioner had been convicted of a specified offense against a minor and had not established, beyond a reasonable doubt, that he posed no risk to the Beneficiary's safety and well-being. The Director also determined that the Petitioner and Beneficiary had not met in person within the two years immediately preceding the filing of the petition and the

Petitioner did not establish that complying with this requirement would cause him extreme hardship, or violate strict and long-established customs of the Beneficiary's foreign culture or social practice.

On appeal, the Petitioner does not contest the Director's determination that he has been convicted of a specified offense against a minor. He does, however, submit a brief and new evidence, claiming that he poses no risk to the safety and well-being of the Beneficiary. In support of this claim, the Petitioner submits an email exchange between himself and a Licensed Master Social Worker (LMSW), who the Petitioner contacted in an attempt to obtain a professional evaluation establishing that he poses no risk to the safety and well-being of the Beneficiary. In an email, the LMSW informed the Petitioner that a new evaluation "would be futile" because he could not "say that [the Petitioner is] not a risk at all in the future." The LMSW continues, stating that he "can likely demonstrate that [the Petitioner is] a low risk but never a zero risk." The Petitioner has not submitted any evidence contradicting the LMSW's statements, apart from his own claims that he poses no risk to the safety and well-being of the Beneficiary. Considering the foregoing, the record supports the Director's determination that the Petitioner has not established, beyond a reasonable doubt, that he poses no risk to the Beneficiary's safety and well-being.

The Petitioner also does not contest the Director's determination that he did not establish that the parties met in person within two years before the date of filing the instant fiancé(e) petition. Instead, the Petitioner contends that complying with the requirement would have caused him extreme hardship. In support, the Petitioner claims that when he attempted to enter the Philippines in 2013 to visit the Beneficiary, authorities prohibited him from doing so due to his criminal history and status as a sex offender. Because of this, the Petitioner argues that meeting the Beneficiary in person would have been impractical, expensive, and problematic. As noted by the Director, the fact that the Petitioner was prevented from entering the Philippines does not establish he would endure extreme hardship by meeting the Beneficiary in a third country. The Petitioner was permitted to depart the Philippines for the United States after he was refused entry and he has not submitted any evidence that he and the Beneficiary could not have met in a third country during the relevant timeframe to satisfy the in-person meeting requirement. Because the Petitioner does not claim that satisfying the in-person meeting requirement would violate strict and long-established customs of the Beneficiary's foreign culture or social practice and he has not established satisfying the requirement would have caused him extreme hardship, the Petitioner is not exempt from the requirement, and the Beneficiary may not benefit from the instant petition.

III. CONCLUSION

As the Petitioner has not met the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant, he has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.