U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10133831

Date: OCT. 2, 2020

Appeal of California 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 California Service Center (Director) denied the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), and 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

The burden of proof is on the 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). Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), provides that the petitioner must establish, *inter alia*, that the parties 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. A marriage will be valid for immigration purposes only where any prior marriage of either party has been legally terminated and both individuals are free to contract a new marriage. *Matter of Hann*, 18 I&N Dec. 196, 198 (BIA 1982). Both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the fiancé(e) petition is filed. *Matter of Souza*, 14 I&N Dec. 1, 3 (Reg'l Comm'r 1972); *see also* 8 C.F.R. § 103.2(b)(1) (providing that a petitioner must establish eligibility for an immigration benefit at the time of filing the benefit request).

II. ANALYSIS

The Petitioner filed the instant fiancée petition in December 2018. The Director noted that the record contained evidence that the Petitioner was previously married and that as evidence of the termination of that marriage, the Petitioner submitted a divorce degree obtained in Bulgaria. The Director also noted, however, that the record did not contain evidence that the Petitioner or his former spouse were residing in Bulgaria when the divorce decree was obtained. Therefore, the Director issued the Petitioner a request for evidence (RFE) that either the Petitioner or his former spouse was residing in

Bulgaria when the divorce decree was obtained. The Petitioner responded to the RFE with a statement and a previously approved fiancée petition for a different beneficiary. The Petitioner contended that his former spouse was residing in Bulgaria when the divorce decree was obtained and argued that the instant petition should be approved because he received approval of a previous fiancée petition containing the same divorce decree.

The Director denied the fiancée petition, concluding that the Petitioner did not submit sufficient evidence establishing the parties were 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. Specifically, the Directed noted that the Petitioner did not submit sufficient evidence to show that the Bulgarian divorce decree was valid for immigration purposes because he did not establish that he or his former spouse were domiciled in Bulgaria when the divorce degree was obtained. *See Matter of Ma*, 15 I&N Dec. 70, 72 (BIA 1974) (providing that a divorce obtained in a foreign country will not normally be recognized as valid for immigration purposes if neither of the spouses had a domicile in that country, even though domicile is not a requirement for jurisdiction under the divorcing country's laws). The Director further noted that the existence of a previously approved fiancée petition does not definitively establish eligibility for the instant petition because any previous approval may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm. 1988) (stating that the agency "is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous").

On appeal, the Petitioner contends that the divorce decree is valid for immigration purposes because his former spouse was domiciled in Bulgaria when the decree was issued and, as such, he is legally able to conclude a valid marriage. In support, he presents an opinion letter from a licensed attorney concluding that the Bulgarian divorce decree is valid in the state of California, where the Petitioner resides. The Petitioner also resubmits a copy of the divorce decree and a certificate from a regional court in Bulgaria affirming that the divorce decree is valid. The Petitioner does not claim and the evidence does not suggest that he was domiciled in Bulgaria when he obtained the divorce degree. Although we acknowledge the Petitioner's statement that his former spouse was domiciled in Bulgaria when the divorce decree was obtained, he has not submitted independent evidence supporting that contention. As stated by the Director, without evidence that at least one party to the divorce decree was domiciled in Bulgaria when it was obtained, the Petitioner has not established by a preponderance of the evidence that his divorce to his former spouse is valid for immigration purposes. Thus, the evidence the Petitioner submits on appeal is insufficient to establish by a preponderance of the evidence that the parties 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, as section 214(d)(1) of the Act requires.

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence eligibility for the benefit sought under section 101(a)(15)(K)(i) of the Act.

ORDER: The appeal is dismissed.