



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

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

In Re: 11198708

Date: APR. 30, 2021

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 under 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 denied the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), concluding that the record did not establish the Petitioner was free to marry the Beneficiary and that the Petitioner had failed to comply with the International Marriage Broker Regulation Act (the IMBRA) documentation requirements. On appeal, the Petitioner submits a copy of his divorce decree, asserts that the Director erred with regard to the IMBRA requirements, and submits a statement and additional evidence to demonstrate his eligibility.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence.<sup>1</sup> We review the questions in this matter *de novo*.<sup>2</sup> Upon *de novo* review, we will remand the petition to the Director for entry of a new decision.

## I. LAW

Section 214(d)(1) of the Act states that a petitioner must establish that the parties have previously met in person within two years before the date of filing the fiancé(e) petition, have an intention to enter into a bona fide marriage, and are legally able and actually willing to conclude a valid marriage in the United States within a period of 90 days after a beneficiary's arrival.

The IMBRA was created to prevent violence against alien spouses, fiancé(e)s and their children by informing them of a petitioner's criminal convictions for specified offenses and/or any protection or restraining orders before they enter the United States. *See* Title VII, Subtitle D of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 199 Stat. 2960 (2006), 8 U.S.C. § 1375a. As such, the IMBRA requires a petitioner to submit information on any criminal convictions for "specified crimes."<sup>3</sup>

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<sup>1</sup> Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

<sup>2</sup> *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

<sup>3</sup> The IMBRA's specified crimes include: (1) domestic violence, sexual assault, child abuse and neglect, dating violence,

Adjudicators have the discretion to validate assertions or corroborate evidence and information by consulting USCIS or other governmental files, systems, and databases, or by obtaining publicly available information. 8 U.S.C. § 1357(b).

## II. ANALYSIS

The Petitioner filed the instant fiancé(e) petition on behalf of the Beneficiary, a citizen of Syria. The fiancé(e) petition contains several questions in Part 3 that relate to a petitioner's criminal history. For example, questions 1, 2a, 2b, and 2c screen for any IMBRA-specific crimes and offenses, whereas questions 4a, and 4b relate to non-IMBRA-specific crimes and offenses. The Petitioner initially failed to answer question 2a, and answered no to the other criminal history related questions.<sup>4</sup> The Director issued a request for additional evidence (RFE), and asked him to answer question 2a. The Petitioner responded "Yes," but provided criminal disposition records relating to non-IMBRA-specific arrests and a conviction.<sup>5</sup>

On appeal, the Petitioner provides a statement in which he explains that he provided "certified copies of arresting. I went again to the court and got certified and notarized documents about arresting as I could ... ." We will therefore withdraw this portion of the Director's decision and remand the matter so that the Director may consider this new evidence, as a search of system records does not indicate that the Petitioner has any IMBRA-specific criminal arrests or offenses. As the record currently stands, there is no evidence that the Petitioner committed or attempted to commit any of the IMBRA-specified crimes or offenses covered by question 2a of the fiancée petition.

The Petitioner also submits new evidence on appeal that appears material to the Director's conclusion regarding the Petitioner's ability to legally remarry. Specifically, the Petitioner provides a copy of his divorce decree, which indicates he may have been free to marry the Beneficiary at the time he filed the petition.<sup>6</sup>

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elder abuse, stalking, or an attempt to commit any such crime; (2) homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause; and (3) at least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act. *See* section 214(d)(3) of the Act. In addition, any permanent protection or restraining order issued against the petitioner related to any IMBRA-specified crime must be disclosed to the Beneficiary.

<sup>4</sup> Question 2a asks "Have you EVER been arrested or convicted of any of the following crimes: Domestic violence, sexual assault, child abuse, child neglect, dating violence, elder abuse, stalking or an attempt to commit any of these crimes?"

<sup>5</sup> The Petitioner submitted documentation relating to an arrest for selling beer to a minor, which was dismissed; an arrest for public intoxication, which was also dismissed; and, finally, an arrest for assaulting an officer, with a disposition of "judgment deferred - no conviction" for which he was required to satisfactorily complete probation.

<sup>6</sup> The Petitioner's divorce decree states that he divorced his first wife on [redacted] 2005. However, we observe a discrepancy regarding the date of his divorce, which the Director may wish to clarify since the Form I-129F states that he was divorced on [redacted] 2008. Nevertheless, because he filed the fiancée petition in 2019, it appears as though he may in fact be legally free to marry the Beneficiary.

### III. CONCLUSION

The matter will be remanded to the Director to consider the documentation submitted on appeal and enter a new decision. The Director may request any additional evidence considered pertinent to the new determination, and we express no opinion regarding the ultimate resolution of this case on remand.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.