



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

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

In Re: 7267592

Date: JAN. 29, 2021

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 India, to the United States as a K-1 nonimmigrant fiancé(e) under 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), and the matter is now before us on appeal. On appeal, the Petitioner submits a brief, additional evidence, and copies of previously submitted documents. 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), K-1 nonimmigrant classification may be accorded to an individual 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 [90] days after admission” Section 101(a)(15)(K)(i) of the Act.

The International Marriage Broker Regulation Act (IMBRA), at Title VIII, Subtitle D of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960, imposes limitations on the number of petitions a petitioner may file or have approved without seeking a waiver of the application of those limitations. Section 214(d) of the Act. 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 foreign national 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)(A) of the Act. It further provides for a discretionary waiver of these limitations “if justification exists.” Section 214(d)(2)(B) of the Act.

The petitioner bears the burden of proof to establish 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). A petitioner may request a waiver by attaching a signed and dated letter, requesting the waiver and explaining why a waiver would be appropriate in his or her circumstances. 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), <http://www.uscis.gov/>

legal-resources/policy-memoranda. Factors considered in the exercise of discretion 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; and whether it appears a petitioner has a pattern of filing multiple petitions for different beneficiaries at the same time, filing and withdrawing petitions, or obtaining approvals of petitions every few years. *Id.*

II. ANALYSIS

The record indicates that the Petitioner filed a prior fiancé(e) petition on behalf of a different beneficiary in November 1991, and that it was approved in December 1991. The record further indicates that the Petitioner filed a prior fiancé(e) petition on behalf of the Beneficiary in June 2016, and that it was approved in September 2016. The Petitioner filed the instant petition in September 2017.

The Director denied the petition. The Director concluded that, because the Petitioner filed two prior fiancé(e) petitions on behalf of different beneficiaries and because he filed the instant petition within two years of the prior petition filed on behalf of the Beneficiary, the instant petition was subject to the IMBRA limitations at section 214(d)(2)(A) of the Act. The Director further concluded that the Petitioner had not submitted sufficient evidence to establish that the petition warranted a favorable exercise of discretion to waive the limitations. The Director highlighted that, on two occasions in 2008, the Beneficiary appeared at a U.S. consulate to apply for a B-1/B-2 visitor visa with an individual she claimed was her spouse and was refused a visa on both occasions. The Director acknowledged the evidence in the record claiming that the Beneficiary has never been married and that a since-deceased immigration agent who was assisting her in procuring the visitor visas made false statements regarding her marital status, but nonetheless emphasized that this history called into question her credibility and ability to marry. The Director further highlighted that the U.S. Department of State (DOS) declined to issue a nonimmigrant visa to the Beneficiary based on the approval of the June 2016 petition, instead terminating the petition based on a conclusion that there was insufficient evidence of genuine intent to marry. The Director acknowledged documentation of the Petitioner and Beneficiary's communications via telephone and text filed with the prior and instant petition, but noted that the text communications showed no substantive conversations, only repeated messages of "good morning" and "hello" over the course of several months, and the telephone conversations did not conclusively reflect who was making or receiving the telephone calls. The Director additionally acknowledged evidence in the record indicating that the Petitioner visited the Beneficiary in 2018, but noted that the Petitioner did not state when, or for how long, he did so. The Director last acknowledged evidence in the record regarding the Petitioner's struggles with panic attacks and anxiety, but concluded that the record as a whole did not establish that a favorable exercise of discretion to waive the IMBRA limitations was warranted.

On appeal, the Petitioner submits a photocopy of a Character Verification Certificate, issued by the Senior Superintendent of Police of the [redacted] District of [redacted] India. The certificate provides that the Beneficiary resides in the [redacted] District's jurisdiction, that she "bears good character and reputation[.]" and that her "marital status is still unmarried. She has not performed any marriage ceremony so far." The Petitioner additionally submits an original affidavit signed by various officials from the village where the Beneficiary resides. The affidavit provides that the Beneficiary has "never been engaged or married to anyone else besides" the Petitioner. The Petitioner last submits additional

telephone logs, documenting what he asserts to be numerous telephone calls made from the Beneficiary's telephone. However, similar to the concerns articulated in the Director's decision, the additional telephone logs do not provide information regarding the owner of the telephone number or otherwise provide the calling or receiving numbers.

We acknowledge the additional evidence submitted on appeal and its relevancy to the Beneficiary's marital status and whether she is able to marry the Petitioner within 90 days of her arrival in the United States. However, the Director did not determine that a favorable exercise of discretion to waive the IMBRA limitations was not warranted on this basis alone. Instead, the Director additionally highlighted concerns regarding the Petitioner's credibility in light of her immigration history, the DOS' termination of the Petitioner's prior petition based on a lack of sufficient evidence of genuine intent to marry, and the insufficient evidence in the present record to establish that the Petitioner and Beneficiary's relationship was *bona fide*. The Petitioner has not concretely addressed, or submitted any additional evidence relevant to, these issues on appeal. Instead, he reiterates that already argued and considered by the Director, submits additional telephone records, and generally asserts that his relationship to the Beneficiary is *bona fide* because he spent money on their engagement, spent hours talking to her on the phone, filed two petitions on her behalf, and appealed the instant petition. The Petitioner's evidence and assertions do not provide, on their own, a sufficient basis upon which to determine that the Director erred in determining that the Petitioner has not met his burden of establishing that a favorable exercise of discretion to waive the IMBRA limitation is warranted.

III. CONCLUSION

After consideration of the Petitioner's arguments and additional evidence submitted on appeal, our *de novo* review of the record does not demonstrate that the Director failed to consider or otherwise inappropriately weighed the Petitioner's evidence in determining that a favorable exercise of discretion to waive the IMBRA limitations was not warranted. Accordingly, the petition remains denied.

ORDER: The appeal is dismissed.