



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 15895744

Date: JUN. 2, 2021

Appeal of a California Service Center Decision

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

The Petitioner, a U.S. citizen, seeks the Beneficiary's admission to the United States under the fiancé(e) visa classification. See Immigration and Nationality Act (the Act) section 101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i) (the "K-1" visa classification). A U.S. citizen may petition to bring a fiancée to the United States in K-1 status for marriage.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not provide sufficient documentation of an in-person meeting with the Beneficiary during the two-year period prior to filing the petition or that he merits a discretionary waiver of the personal meeting requirement. On appeal, the Petitioner provides a brief providing reasons why he was not able to meet the Beneficiary and submits additional evidence. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence.¹ We review the questions in this matter de novo.² Upon de novo review, we will remand the matter for further action.

I. LEGAL FRAMEWORK

A. Requirement that Petitioner and Beneficiary Have Met and Discretionary Exemption

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), defines the petitioner and beneficiary meeting requirement and states that the Secretary of Homeland Security may discretionarily waive this requirement.

[U]nder the provisions of section 101(a)(15)(K) . . . [The petition] shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition . . . except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person.

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

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

8 C.F.R. § 214.2(k)(2) provides two conditions under which the Director may exempt a meeting between the petitioner and the beneficiary:

Requirement that petitioner and K-1 beneficiary have met. The petitioner shall establish . . . that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the Director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the K-1 beneficiary's foreign culture or social practice

B. Request for Evidence

In addition, 8 C.F.R § 103.2(b)(8)(iv) specifies what a request for evidence (RFE) should contain:

Process. A request for evidence . . . will specify the type of evidence required, and whether initial evidence or additional evidence is required, or the bases for the proposed denial sufficient to give the applicant or petitioner adequate notice and sufficient information to respond.

II. DISCUSSION

The Director denied the instant petition because the Petitioner did not satisfy section 101(a)(15)(K) of the Act. Specifically, the Director concluded the Petitioner did not meet the Beneficiary within the requisite two-year period nor establish eligibility for the discretionary waiver contained at 8 C.F.R. 214.2(k)(2). The Director also stated that the RFE had notified the Petitioner that he could submit evidence “that meeting the beneficiary in person would violate strict and long-established customs of the beneficiary's foreign culture or social practice.” However, the RFE in fact did not contain that language.

As the Petitioner's initial submission did not include sufficient evidence of an in-person meeting between the parties or documentation showing that he qualifies for a discretionary exemption of the required meeting, the Director issued the RFE.³ A petitioner may qualify for the discretionary exemption by showing that compliance to the required meeting (1) would result in extreme hardship to the petitioner or (2) would violate strict and long-established customs of the beneficiary's foreign culture or social practice.⁴ Since the RFE only requested the Petitioner to submit documentation that demonstrates the meeting requirement would have caused him extreme hardship, the Petitioner was not given appropriate notice in the RFE for a basis of the denial nor given the opportunity to demonstrate if he would qualify for the second option of the exception. Since the Director's RFE did not identify all the discretionary exemption options at 8 C.F.R. § 214.2(k)(2), it did not satisfy 8 C.F.R

³ The Petitioner filed the fiancé(e) petition on September 6, 2019, and was therefore required to have met the Beneficiary in person between September 6, 2017, and September 6, 2019. In Part 2 of the fiancé(e) petition, the Petitioner checked “No” in response to the question regarding whether he had met the Beneficiary during the required two-year period, and stated that this was an arranged marriage and has not met the Beneficiary for religious reasons.

⁴ 8 C.F.R. § 214.2(k)(2).

§ 103.2(b)(8)(iv) and the matter must be remanded for issuance of a new RFE that satisfies these requirements.

The Petitioner's provisions of additional evidence on appeal, including money transfer records from the Petitioner to the Beneficiary, photos, screenshots of instant messages and other social media, and letters from his employer, is acknowledged, as is his claim that he could not meet his fiancée because he was pursuing computer certifications from May 2019 to June 2020 and attending college. The Petitioner also states he could not take vacation in 2019, because of his job responsibilities because his employer was moving.

Although we recognize the Petitioner's employment and educational situation, the Petitioner's schedule conflicts do not appear to rise to the level of extreme hardship contemplated in the statute and regulations. Also, even if the Petitioner was not able to meet the Beneficiary from May 2019, the Petitioner has not provided any reasons why he and the Beneficiary could not have met at another time within the requisite two-year period. Moreover, the Petitioner's money transfer records, photos, and screenshots do not demonstrate the Petitioner met the Beneficiary personally within the required two-year period nor do they provide evidence of extreme hardship to the Petitioner. Therefore, none of the additional evidence would appear to demonstrate that he merits a discretionary waiver of the two year in-person meeting requirement pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). However, since we are remanding this matter, in part, for a first-time review of the new evidence submitted on appeal, the determination as to the adequacy of that evidence rests with the Director.

III. CONCLUSION

We are therefore withdrawing the Director's decision and remanding this matter for further processing. The Director should (1) issue an RFE that affords the Petitioner the opportunity to demonstrate he has either satisfied the two-year meeting requirement or evidence he qualifies for one of the discretionary exemptions, and (2) then determine if the Petitioner establishes eligibility for the benefit under section 101(a)(15)(K) of the Act.

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