



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 16187739

Date: JUN. 8, 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 Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) 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 she merits a discretionary waiver of the personal meeting requirement. On appeal, the Petitioner contests the decision, provides a brief detailing why she was not able to meet the Beneficiary, and submits additional evidence.

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

Section 214(d)(1) of the Act states that a fiancé(e) petition can be approved only if the petitioner establishes that the parties have previously met in person within two years before the date of filing the fiancé(e) petition, have a bona fide intention to marry, and 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. U.S. Citizenship and Immigration Services (USCIS) maintains the discretion to waive the requirement of an in-person meeting between the two parties 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.*; 8 C.F.R. § 214.2(k)(2).

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).

II. PERTINENT FACTS AND PROCEDURAL BACKGROUND

The Petitioner filed the fiancé(e) petition on May 23, 2019, and she was therefore required to have met the Beneficiary in person at some point between May 23, 2017, and May 23, 2019. However, the Petitioner has never met the Beneficiary in person and instead requested a waiver of the required meeting. In her statement, the Petitioner explained that she has chronic epilepsy, which could cause seizures and would be dangerous to her health if she traveled to the Beneficiary's home country. Also, the Beneficiary has attempted to meet the Petitioner in several countries, but he has been denied visas to the United States (2015, 2016, 2018), Mexico (2016), and Canada (2016). The Petitioner asserted that these visa denials have caused additional hardship by causing psychological trauma leading to depression and anxiety attacks. In support, the Petitioner provided supplementary documents, including medical records spanning the period 2004 to 2019. In particular, an April 2019 statement from her medical doctor recommends that the Petitioner "avoid long-distance travel which could worsen her seizures."

As the Petitioner's initial submission did not include sufficient evidence of an in-person meeting between the parties or documentation showing that she qualifies for a discretionary exemption of the required meeting, the Director issued the request for additional evidence (RFE).³ With her response, the Petitioner provided a statement by the Beneficiary, and documents related to the Beneficiary's Mexican and Canadian visa applications. The documents confirm that the Beneficiary applied for visas for both Mexico and Canada in 2016.

The Director ultimately denied the fiancé(e) petition because the Petitioner has never met the Beneficiary in person during the requisite time period and failed to demonstrate that the requisite meeting would cause her extreme hardship. In regard to extreme hardship, the Director concluded the parties could have traveled and met; therefore, the evidence was insufficient to provide a waiver. Specifically, the Director concluded that (1) the April 2019 medical notes stating the Petitioner's last seizure was in February 2015; (2) the same medical notes indicate the Petitioner is not prohibited from driving; (3) the Petitioner's father could drive her to meet the Beneficiary in Canada; (4) the Beneficiary could apply for new visa applications and could overcome the previous visa denials; and (5) the parties did not attempt to meet in Mexico, Canada, or another country of "comparable length of travel" within the requisite two-year meeting period, May 2017 to May 2019.

On appeal, the Petitioner contests the decision and argues (1) the Director did not take all the evidence into consideration; (2) the Director made various factual allegations; (3) the Petitioner has established meeting the Beneficiary would be an extreme hardship to her; (4) the Director did not evaluate the Petitioner's psychological state on her hardship claim; and (5) the Petitioner's hardship is ongoing as her medical condition is not curable. The Petitioner also provides additional documents including an

³ The Director's RFE asked the Petitioner to submit documentation of the required in-person meeting or to show that satisfying the meeting requirement would have caused him extreme hardship or have violated the Beneficiary's customs, foreign culture, or social practice. With respect to extreme hardship, the RFE stated acknowledged (1) the Petitioner was diagnosed with chronic epilepsy, (2) the Petitioner stated the Beneficiary applied for tourists visas in the United States, Canada, and Mexico, and (3) USCIS records indicate the Beneficiary was denied a U.S. tourist visa on February 9, 2018. The Director requested the Petitioner to submit: (1) documentary evidence to establish that the beneficiary applied for a visa to Canada and Mexico; and (2) "submit additional evidence to support [the Petitioner's] waiver that includes, but is not limited to affidavits and/or documentation from doctors, employers, etc. that would establish that such a personal meeting would result in extreme hardship to . . . the [P]etitioner."

updated statement from the Petitioner, an August 2020 statement and evaluation from her medical doctor, a February 2019 mental health assessment, and a list of the Petitioner's current medication.

III. ANALYSIS

For the reasons discussed below, we are withdrawing the Director's decision and remanding this matter for further processing.⁴ Specifically, the Petitioner submits additional evidence regarding the extreme hardship she claims would result from an in-person meeting, and it appears material to her case. We are therefore remanding the matter in order to afford the Director an opportunity to conduct a first-line review of that evidence. Moreover, and as discussed below, we find that several aspects of the Director's decision seem to have overlooked certain evidence and arguments, and imposed a higher-than-preponderance threshold in rejecting other evidence and arguments, and we therefore are remanding the matter so that those issues can also be revisited.

The provided medical history establishes the Petitioner has been diagnosed with chronic epilepsy, and that her condition causes seizures. Contrary to the Director's conclusion, the medical records indicate the Petitioner continued experiencing seizures beyond February 2015. For example, the August 2016 medical record states the Petitioner "recently had two seizures without a clear trigger" and the January 2018 medical record states she "feels her seizures have been worse since a trip to [redacted]"⁵ Also, the Director appears to have erred by determining the Petitioner's last seizure was in February 2015 by quoting the "Background History" section of the medical record, which appears to be a historical narrative of the Petitioner's semiology until 2015 but does not discuss the Petitioner's symptoms at the time of her visit.⁶ Therefore, the current record appears to establish the Petitioner's epilepsy is ongoing, and that her seizures are continuing.

In addition, the April 2019 statement from the Petitioner's medical doctor treating her epilepsy specifically states that "she has previously suffered a seizure while on an airplane flight" and recommends "she avoid long-distance travel which could worsen her seizures." According to the doctor's opinion, the Petitioner should not partake in any long-distance travel because it may cause a detrimental health outcome. Even if the Petitioner were able to drive or ride in a car with another individual, travel to Canada, Mexico, or third country would appear to be long distance and therefore present a health risk with her chronic medical condition. Thus, the Director's conclusion that the Petitioner could travel by car to meet the Beneficiary in another country without experiencing extreme hardship seems to have imposed a higher-than-preponderance threshold.

Also, the standard for the discretionary waiver is based on extreme hardship to the Petitioner. In the instant case, the Petitioner has been medically recommended not to travel any long distances, and the Beneficiary has not been able to procure a visa to the United States during the requisite meeting period.

⁴ The Petitioner submitted multiple documents to support the fiancé(e) petition. While we may not discuss every document submitted, we have reviewed and considered each one.

⁵ The record, including passport stamps, indicates that Petitioner traveled to [redacted] Mexico in August 2016.

⁶ The "Background History" section appears in several [redacted] medical records issued between September 2015 to April 2019. (In the September 1, 2015 medical record, the "Background History" section is noted as "HPI" [history of present illness] instead.) The "Background History" section has a sub-section called "Semiology/History" that consistently has the same narrative stating the Petitioner's last seizure "outside the [Epilepsy Monitoring Unit] was in February 2015."

As such, the ability of the Beneficiary to obtain a visa for travel to another country, such as Canada or Mexico, even if within the requisite meeting period, should not be factored into the Petitioner's hardship because she would not be able to travel long distances due to her condition.

Moreover, the appellate brief notes that the Director's decision did not provide any discussion of the Petitioner's psychiatric state and depression, and how those factors affects her hardship claim. As mentioned, the Petitioner provides additional evidence on appeal, including an updated Petitioner statement and a February 2019 mental health assessment that may be material to her claim. As such, we will remand the matter to the Director to consider our analysis and review the Petitioner's claim of extreme hardship. The Director should also consider how the Petitioner's mental health affects her hardship claim and review the new evidence on appeal so that a determination can be made as to whether the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant have been met.

IV. CONCLUSION

In sum, we are therefore withdrawing the Director's decision and remanding this matter for further processing. The Director should (1) review the new evidence presented on appeal in support of the Petitioner's claims of extreme hardship; (2) consider our analysis and review the Petitioner's claim of extreme hardship, including the Petitioner's mental health arguments; and (3) issue a new decision determining whether these and any remaining statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant have been met.

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