U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16776070

Date: JUN. 9, 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 Petitioner did not establish eligibility for the benefit sought at the time of filing. On appeal, the Petitioner asserts that the Director erred.

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 withdraw the Director's decision and 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.

Because the parties are first cousins, the question at issue is whether at the time of filing the fiancé(e) petition, the parties were legally able and willing to conclude a valid marriage.

II. ANALYSIS

The Director found that the Petitioner did not establish eligibility for the requested benefit at the time of filing because the Petitioner's state of residence, Pennsylvania, does not permit marriage between cousins. The Director issued a request for additional evidence (RFE) to address the sole issue of whether the Petitioner had the ability to enter into a valid marriage to the Beneficiary. In response to

[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).

the Director's RFE, the Petitioner submitted evidence to establish she planned to establish a domicile in New Jersey because that state permits marriages between cousins.[3]

The Board of Immigration Appeals has long held that the validity of a marriage is determined by the law of the state in which the marriage was celebrated. *In re Lovo-Lara*, 23 I&N Dec. 746, 753 (BIA 2005). The Petitioner's state of residence at the time of filing (Pennsylvania) prohibited the issuance of a marriage license for cousins.[4] However, Pennsylvania recognizes marriages between cousins, domiciled in Pennsylvania, which are solemnized in another state where such marriages are lawful, as long as the marriage does not violate public policy.[5] *See Schofield v. Schofield*, 20 Pa. D. 805, 807 (Com.Pl.1910). As noted, the Petitioner expressed a desire and willingness to establish a domicile in New Jersey because that state legally permits marriage between cousins.

If the Petitioner's ability to enter into a valid marriage with the Beneficiary in New Jersey was contingent upon her residing in New Jersey, and therefore her relocation to that state, then we would agree with the Director that the Beneficiary was not eligible at the time of filing because she did not reside in New Jersey at the time the petition was filed. As the Director correctly noted, the regulation at 8 C.F.R. § 103.2(b)(1) mandates that a petitioner establish eligibility at the time of filing. The Petitioner's argument made on appeal therefore fails.

But our inquiry will not end there, however, because it still appears more likely than not as though the Beneficiary is eligible for the benefit she seeks. Such is the case because our reading of the marriage laws of New Jersey leads us to conclude that residence in New Jersey is not required for a couple to marry there. In other words, it appears that as a then-resident of Pennsylvania, the Petitioner would have been able to enter into a marriage with the Beneficiary in the State of New Jersey at the time this petition was filed. For example, that state's rules regarding the provision of marriage licenses specifically allows for such licensure in the case of two applicants who reside outside the state: "The marriage . . . license shall be issued . . . in the municipality in which either party resides . . . if neither party is a resident of [New Jersey], in the municipality in which the proposed marriage . . . is to be performed." N.J. Rev. Stat. § 37:1-3 (2013). Moreover, as indicated above it also appears as though, at the time of filing, the Petitioner's then-state of residence – Pennsylvania – would have recognized a marriage between first cousins that took place in New Jersey.

As such, while the Petitioner's assertions on appeal regarding her intention to move to New Jersey do *not* carry her burden, the record *does* establish nonetheless that she was able to marry the Beneficiary

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[3] *See* N.J. Rev. Stat. § 37:1-1 (2013) (prohibiting marriage between certain familial relatives, but not between first cousins). As evidence of her intent to relocate to New Jersey, the Petitioner submitted a signed (but undated) residential lease in New Jersey for the property where she intends to reside with the Beneficiary and a personal letter explaining that she was unaware, at the time of filing the fiancé(e) petition that Pennsylvania (her state of residence) did not permit her to marry her cousin, but that she is able and willing to relocate to New Jersey, to enter into a legal marriage.

[4] Title 23 of Pennsylvania Consolidated Statutes § 1304(e) states "Marriage to relatives -- No marriage license may be issued to applicants within the prohibited degrees of consanguinity which are as follows: ... A man may not marry his first cousin ... A woman may not marry her first cousin."

[5] Generally, Pennsylvania's public policy is violated in the case of polygamous marriages and incestuous marriages according to the principles prevailing in Christendom (for example, marriages between fathers and daughters, mothers and sons, mothers and nephews, uncles and nieces, and so on). *See* American Law Reports (A.L.R.), *Recognition of foreign marriage as affected by policy in respect of incestuous marriages*, 117 A.L.R. 186 (Originally published in 1938). Cousin marriages do not fall into this category.

in that state at the time of filing because New Jersey does not limit marriage to in-state residents. Moreover, Pennsylvania – her then-state of residence – would have recognized the out-of-state marriage. Given the Petitioner's willingness to *relocate* to New Jersey, we find it reasonable to conclude by a preponderance of the evidence that the couple would be willing to *travel* to that state for the purpose of concluding a marriage. The record, therefore, is sufficient to overcome the sole ground of the Director's decision denying the petition.

III. CONCLUSION

As such, the evidence of record is sufficient to overcome the single ground stated in the Director's decision denying the petition. However, we will remand the matter to the Director to consider any remaining requirements 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.