U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15209738

Date: JUN. 11, 2021

Appeal of 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.[1] A U.S. citizen may petition to bring a fiancé(e) 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 submit sufficient evidence demonstrating the Beneficiary has a bona fide intent to marry, the parties personally met within the two-year period immediately preceding the filing of the petition, and a discretionary waiver of the personal meeting requirement is warranted.

On appeal, the Petitioner asserts the Director erred and submits additional statements authored by himself and the Beneficiary's family members. Upon de novo review,[2] we will dismiss the appeal.

I. LAW

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), 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.[3]

A petitioner must establish that it meets each eligibility requirement of the benefit sought by a preponderance of the evidence.[4] In other words, a petitioner must show that what it claims is "more

[1] 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).
[2] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).
[3] Id.; 8 C.F.R. § 214.2(k)(2).
[4] Matter of Chawathe, 25 I& N Dec. 369, 375-76 (AAO 2010).

likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence.[5]

II. ANALYSIS

The Petitioner has not established that the parties have a bona fide intent to marry, previously met in person within two years before the date of filing the fiancé(e) petition, or that he merits a discretionary waiver of the two-year in person meeting. The Petitioner filed a prior fiancé(e) petition [redacted] on September 28, 2016, which the Director denied because the Petitioner had not established that the parties personally met within the two-year period immediately preceding the filing of the petition and that a discretionary waiver of the personal meeting requirement was warranted. Based on the record at the time, the petition was sustained on appeal, however, the Department of State (DOS) returned the petition recommending revocation as the parties were unable to establish a bona fide relationship.[6]

The Petitioner filed the instant fiancé(e) petition on May 17, 2019. To support the parties' bona fide intent to marry, the Petitioner included a statement dated March 16, 2018, explaining that the Beneficiary's aunt introduced the parties by phone around December 2015. The Petitioner's statement added that the parties:

> [B]egan texting each other. First, we just talked about ourselves, our families, and our likes and dislikes. We talked about many different things such as what we did, where we worked, our relatives and such. We talked about differences between Vietnam and the United States and many different things. Finally, after a while, instead of texting, we started talking to each other on the phone, but mostly used an application 'WeChat' which allows you to send text and translate in English and Vietnamese. The more we talked and texted the more we became friends at first.

The Petitioner included a printout of the messages the parties sent to each other, which evidences they have been in contact since 2017, but does not support the substantive conversations referenced above or how and when they decided to pursue marriage. It is unclear if the Petitioner meant the parties verbally talked to each other about these topics. If this is the case, he does not explain how they were able to communicate since they speak different languages and did not begin using a translation application until later in the relationship.[7]

While the record includes letters by both parties declaring their intent to marry within 90 days of the Beneficiary's arrival, we note no additional details or statements were provided by the Beneficiary regarding the bona fides of the relationship. On appeal the Petitioner asserts that the form instructions "indicate no other requirement" than a statement that the parties understand the marriage requirement.

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[5] Id. at 376; Matter of E-M-, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

[6] As the four-month validity period of the petition had expired at the time it was returned to USCIS, the petition was terminated.

[7] The Petitioner must resolve inconsistencies with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Id. at 591.

However, the Petitioner was aware at the time of filing that the DOS raised concerns about the parties' bona fide intent to marry and the Director's request for evidence (RFE) informed him that the Beneficiary's statement was not enough. The form instructions make clear that the Petitioner is not limited to a statement but may provide "any other evidence that establishes, by a preponderance of the evidence, your mutual intention."

Instead, the Petitioner provided many statements by the Beneficiary's family members. Several of the statements are translations unaccompanied by a certificate of translation,[8] some are undated, and none are sworn statements,[9] all of which affect the statements' probative value. Moreover, the statements add little substantive detail regarding the parties' relationship. For example, the statements mention that the Petitioner and Beneficiary spoke regularly but only one aunt had firsthand knowledge, noting that she was part of their video chats. However, the frequency of the chats or the nature of their discussions were not described.

In further support of the bona fides of the relationship, the Petitioner described making plans to travel to Vietnam "in the summer of 2016" but a "medical situation occur[ed] involving a collapse[d] lung" and his doctor "advised" a trip to Vietnam "would not be recommended." Supporting medical documentation was not provided evidencing how long after being introduced to the Beneficiary the medical condition was diagnosed. In addition, the Petitioner did not describe what plans were made in the period prior to his diagnosis, whether hotel or airline tickets were purchased, whether he obtained a passport or visa to travel to Vietnam, etc.

While we note that the Petitioner has provided financial support to the Beneficiary, which is a factor that evidences his bona fide intent, we must look at the totality of the evidence. Here, the record lacks enough consistent, probative, and well supported documentation to overcome the DOS's findings that the parties have established a bona fide relationship.

Furthermore, the Director's RFE and decision explained that the Petitioner had the burden to establish that he met the Beneficiary within the two-year period immediately preceding the filing of the petition or that a waiver of the meeting requirement is warranted. The Petitioner did not provide evidence of having met the Beneficiary within the preceding two years[10] but asserts that the requirement does not apply as we determined a hardship waiver was warranted in a prior fiancé(e) petition. However, as explained by the Director in her decision, each nonimmigrant and immigrant petition is a separate record of proceedings with a separate burden of proof. Each petition must stand on its own individual merits. Furthermore, in determining statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings.[11]

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[8] Foreign language documents submitted in support of the petition must be accompanied by a full English translation which has been certified by a competent translator to be complete and accurate. See 8 C.F.R. § 103.2(b)(3).

[9] When required evidence is not available, the regulations require the submission of affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. See 8 C.F.R. § 103.2(b)(2).

[10] The Petitioner has not asserted or shown that an in-person meeting between the parties would violate strict and long-established customs of the Beneficiary's foreign culture or social practice.

[11] See 8 C.F.R. § 103.2(b)(16)(ii).

The Petitioner submitted a copy of the appeal decision from the prior fiancé(e) petition, the underlying decision, and the RFE. The Petitioner also provided a letter by his physician dated December 15, 2016, with a handwritten note stating "still applies today 11/4/2019" with illegible initials underneath.[12] The body of the letter states that the Petitioner:

> has severe bullous emphysema and previous spontaneous pneumothorax. Due to these two facts of his medical history, Up to Date Medical Journal states that he has some contraindication to flight travel. A long flight may also increase the risk that adequate medical care may not be available if he should develop another pneumothorax. This could pose significant risk to his health or even cause death.

The Petitioner does not provide additional supporting documentation explaining his health issue and how it creates a hardship to meet the beneficiary. The physician's letter does not make clear whether a long flight poses the significant risk[13] or whether the lack of medical care, should another pneumothorax occur in a country like Vietnam, cause the risk. In addition the note in and of itself does not explain whether the Petitioner's condition has changed over the years, whether the likelihood of reoccurrence changes with age, whether he is able to travel by other means, whether he has since undergone any treatments that would mitigate his risk, etc. The Petitioner also states that he has investigated travel by boat, and that the Beneficiary has reached out to attorneys about getting a visa to Canada, but none of his statements are supported in the record. If the parties have taken steps to meet in another country, no such evidence was provided in the record. For these reasons, the record does not show that compliance with the in-person meeting requirement would result in extreme hardship to the Petitioner and he merits a discretionary waiver of the two year in-person meeting requirement.

III. CONCLUSION

The Petitioner has not established that the parties have a bona fide intent to marry, that they previously met in person within two years before the date of filing the fiancé(e) petition, or that a discretionary waiver of the two-year in person meeting is warranted pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2).

ORDER: The appeal is dismissed.

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[12] The Director's decision noted that the initials under the handwritten note did not match the physician's signature. The Petitioner, on appeal, provides a prescription verifying the physician's signature, but this does not evidence the initials belong to the physician.

[13] The previous petition's RFE mentions that the Petitioner had submitted another letter from a doctor stating, "[h]is absolute risk for the development of a recurrent pneumothorax while flying is difficult to estimate, however, it is thought to be relatively low."