U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10946772

Date: JUN. 23, 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 record did not establish the Petitioner was free to marry the Beneficiary. On appeal, the Petitioner submits a brief and 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 dismiss the appeal.

I. LAW

Section 214(d)(1) of the Act states that a petitioner must establish that the parties have previously met in person within two years before the date of filing the fiancé(e) petition, have an intention to enter into a bona fide marriage, and are legally able and actually willing to conclude a valid marriage in the United States within a period of 90 days after a beneficiary's arrival. *See also Matter of Souza*, 14 I&N Dec. 1 (Reg'l Comm'r 1972).

At issue is whether the Petitioner has established, by a preponderance of the evidence, that he is legally able and free to marry the Beneficiary.

II. ANALYSIS

The Petitioner, a native of Laos, is a naturalized citizen of the United States. He and his first wife initially entered the United States together on tourist visas in 2009. Five months after their entry, a divorce certificate was issued in Laos. The Petitioner remained in the United States and married his second wife, a U.S. citizen, and through that relationship he obtained status as a lawful permanent resident. He and his second wife divorced in the United States in [redacted] 2018.

[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 Petitioner filed the instant fiancé(e) petition on behalf of the Beneficiary, a citizen of Laos, on July 8, 2019. The Director issued a notice of intent to deny (NOID) the fiancé(e) petition to which the Petitioner filed a timely response. The NOID explained that the Petitioner had not provided sufficient evidence to establish the termination of his first marriage and that he was therefore legally free to marry the Beneficiary.

The record contains a Confirmation Letter of Divorce (Confirmation Letter of Divorce) signed by the "Chief of [redacted] Village" dated [redacted] 2009. The document states that the divorce was based on mutual consent (or agreement), and that the husband and wife were residing in Laos during the issuance of the letter. The English translation of the Confirmation Letter of Divorce contains the husband's and wife's signature.[3] The Director's NOID placed the Petitioner on notice that according to the U.S. Department of State's "Lao People's Democratic Republic Reciprocity Schedule," "[a] divorce decree must be issued by the court in the district where the couple is resident for a divorce to be final. A divorce certificate issued by a village or district official that is not a member of the court is not sufficient."[4]

In response, the Petitioner obtained an undated letter from [redacted] the Head of the [redacted] Village, stating that the Petitioner complied with the legal requirements to obtain a valid divorce in Laos and that "No court decree is necessary." The Petitioner also provided a letter from his father stating that he represented the Petitioner during the divorce proceeding in Laos, as well as a personal affidavit stating that he (the Petitioner) was previously questioned regarding the legality of the Confirmation Letter of Divorce by USCIS during his marriage-based permanent resident proceeding, and that USCIS accepted the document as valid proof of his divorce. In his NOID response, the Petitioner argued that as a matter of equity, because USCIS had previously accepted his Confirmation Letter of Divorce as valid proof of divorce during his marriage-based permanent resident process, we should accept it here.

We acknowledge that the document was accepted in a prior proceeding, however, we are not required to continue an error, particularly as here, where it is clear the documentary requirements have not been met, and where the Petitioner has not otherwise established, despite notice and adequate time to respond, his eligibility for the benefit sought. It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

[3] We note that there are several discrepancies apparent in the Confirmation Letter of Divorce. As the Director pointed out, the letter states that the parties were living in Laos at the time of the divorce, however, our records show that the Petitioner and his first wife were living in the United States at that time. In addition, the document does not note, as the Petitioner has argued, that he was represented before the village head by his father. In addition, while the English translation of the Confirmation Letter was signed by the Petitioner's first wife, the original was not signed by her and no explanation was given for this discrepancy. Finally, a child of the marriage was not mentioned in the Confirmation Letter. These discrepancies have not been sufficiently explained with objective evidence in the record. The Petitioner must resolve inconsistencies and discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[4] *See* Lao People's Democratic Republic Reciprocity Schedule, https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/LaoPeoplesDemocraticRepublic.html (last visited June 23, 2021).

On appeal, the Petitioner points to an unpublished AAO decision issued in February 2007 in which we determined that a certain Laotian divorce was sufficient for purposes of immigration to the United States. However, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, the information contained in the Department of State's reciprocity table is unambiguous, and we will not disregard it as the Petitioner suggests. If the reciprocity table contained the same information when the unpublished 2007 decision was made, and the fact pattern was in fact identical to the one presented here as the Petitioner implies, then that decision was reached in error.[5]

The Petitioner has not established that his divorce from his first wife is legally valid for immigration purposes. The Confirmation Letter of Divorce and undated letter from [redacted] the Head of the [redacted] Village are insufficient to establish that the village chief had jurisdiction to issue a divorce. More importantly, the documentation provided simply does not comply with the documentary requirements found in the U.S. Department of State Visa Reciprocity Schedule for Laotian divorce records.

There are also several credibility issues present in this petition, and they serve to collectively raise significant questions regarding the reliability of the Petitioner's assertions. For example, the Petitioner did not disclose his first marriage when he filed this petition; he only addressed the issue when the Director raised it in the NOID.[6] We do not find the Petitioner's claim that this was a clerical error persuasive. That he knew to provide evidence regarding the termination of his second marriage demonstrates that he understood the form well enough to be aware of his burden to establish that his prior marriages had been terminated. Nor are we persuaded by his assertion that because USCIS was aware of this first marriage, the omission was a harmless oversight. The burden of proof in this proceeding rests entirely with the Petitioner, despite his effort to shift it to USCIS. That USCIS was able to uncover the existence of the Petitioner's first marriage through a process of patching together information from prior immigration proceedings, despite his material omission, does not shift or otherwise relieve that burden. In any event, we consider the Petitioner's failure to notify USCIS of the existence of his first marriage a significant omission, which adversely affects the Petitioner's credibility.

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[5] If unpublished AAO decisions *were* relevant to this proceeding (which they are not) we would likely point out *In Re: 1106380*, 2018 WL 1920441 (AAO Apr. 3, 2018), which determined that a "certificate of divorce" issued by a "Chief of District Home Affairs Office" in Laos was not sufficient for immigration purposes.

[6] Beyond the decision of the Director, we observe that government records indicate that the Petitioner and his first wife had a one-year old child when they applied for their tourist visas. The Petitioner similarly failed to disclose this child on the fiancé(e) petition, which contains the following question "Do you have any children under 18 years of age?". The Petitioner left this question blank. Additionally, the Confirmation Letter of Divorce makes no mention of a child born to the Petitioner and his first wife. Although the presence and then disappearance of a child born in his first marriage is not a ground to deny his fiancée petition, we point out this discrepancy for two reasons. First, the omission raises questions regarding the Petitioner's candor in his dealings with various United State government agencies. Second, the Confirmation Letter of Divorce does not mention a child of the marriage. Generally speaking, the care and custody of children born in a marriage is a subject of concern in divorce proceedings and the record contains no evidence that the minor child of the parties was considered by the village chief. This raises additional concerns regarding the legitimacy of the village divorce. However, as the petition is not otherwise approvable, we will not explore these supplemental issues further at this time.

The issues identified by the Director regarding the credibility of the Confirmation Letter of Divorce raise yet more credibility concerns. For example, as noted previously, the document was not issued by a member of the court, as appears to be required. Nor does it appear as though residency requirements in Laos were met. Nor is it clear whether either of the parties to the marriage signed the document. The Petitioner does not resolve these concerns on appeal.

Finally, the Petitioner cites to *Popper v. Popper*, 595 So.2d 100 (Fla. Dist. Ct. App. 1992) on appeal and argues that the village divorce would be recognized by Florida law. According to the court in *Popper*, the State of Florida will recognize a foreign divorce if the grounds for the foreign divorce are recognized in Florida and there are no due process or jurisdictional issues related to the village divorce. In addition, the foreign divorce must not violate Florida's public policy. However, the Petitioner has not established that his village divorce would be recognized under the analysis set forth by *Popper*. As the Director pointed out, there are several discrepancies present in the Confirmation Letter of Divorce, and they create both jurisdictional and due process concerns which have not been resolved.

In sum, the record of proceeding as currently constituted does not establish by a preponderance of the evidence that the Petitioner is legally able and free to marry the Beneficiary. The petition, therefore, must remain denied.

III. CONCLUSION

As the Petitioner has not demonstrated that he is legally able to conclude a valid marriage in the United States at the time of filing, he has not met the statutory and regulatory requirements for classifying the Beneficiary as a K nonimmigrant.

ORDER: The appeal is dismissed.