



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

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10875526

Date: MAY 14, 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 is subject to a statutory bar based on a previous fiancé(e) petition he filed on behalf of the Beneficiary, and that he did not sufficiently establish his justification for a discretionary waiver of that bar. On appeal, the Petitioner asserts that the Director erred and requests a waiver of that statutory bar.

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)(2)(A)(ii) of the Act, 8 U.S.C. § 1184(d)(2)(A)(ii), precludes approval of a fiancé(e) petition if less than two years have passed since the filing date of a previously-approved fiancé(e) petition filed by that petitioner.³ However, section 214(d)(2)(B) of the Act, 8 U.S.C. § 1184(d)(2)(B), provides for a discretionary waiver of these limitations "if justification exists."⁴ A petitioner may request a waiver by attaching a signed and dated letter requesting the waiver, and explaining why a waiver would be appropriate in his or her circumstance. Factors considered in the exercise of

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).

³ These provisions are part of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006). Title VII of VAWA 2005 is entitled "Protection of Battered and Trafficked Immigrants," and contains Subtitle D, "International Marriage Broker Regulation." These limitations are commonly known as the IMBRA provisions, for the International Marriage Broker Regulation Act.

⁴ There are no implementing regulations for these provisions, but a U.S. Citizenship and Immigration Services (USCIS) memorandum describes when the IMBRA limitations apply, how one may request a waiver of the limitations, and the factors that USCIS will consider in determining whether a discretionary waiver is warranted. See Memorandum from Michael Aytes, Associate Director, Domestic Operations Directorate, USCIS, HQOPRD 70/6.2.11, International Marriage Broker Regulation Act Implementation Guidance (July 21, 2006), <http://www.uscis.gov/legal-resources/policy-memoranda>.

discretion include, but are not limited to: whether unusual circumstances exist, such as death or incapacity of the prior beneficiary(ies); whether a petitioner appears to have a history of domestic violence; and whether it appears a petitioner has a pattern of filing multiple petitions for different beneficiaries at the same time, filing and withdrawing petitions, or obtaining approvals of petitions every few years.⁵

II. ANALYSIS

The Petitioner filed a fiancé(e) petition on behalf of the Beneficiary in February 2018, and it was approved later that year.⁶ Though USCIS approved that petition, the U.S. Consulate in Islamabad, Pakistan declined to issue the visa to the Beneficiary and returned the petition to USCIS. The instant petition was filed less than two years later in April 2019, thereby subjecting the Petitioner to the IMBRA filing limitation.

The Petitioner does not dispute the fact that this sequence of events renders the fiancé(e) petition before us today subject to the IMBRA filing limitation contained at section 214(d)(2)(A)(ii) of the Act. Rather, the Petitioner seeks a favorable exercise of the discretionary waiver as set forth at section 214(d)(2)(B) of the Act based on the parties' mutual bona fide intention to marry, arguing that a discretionary waiver is warranted because IMBRA was not intended to apply to his particular circumstance.

Specifically, the Petitioner contends that the IMBRA filing limitations were intended to curtail the filing of multiple fiancé(e) petitions on behalf of multiple beneficiaries by the same petitioner or in situations where a petitioner files and withdraws petitions within a two-year span of time. Here, the Petitioner filed his first fiancé(e) petition, which was approved. However, that petition was returned by the consulate to USCIS for the agency to consider revocation. USCIS did not revoke the petition, however the consulate terminated the first petition and the Petitioner filed this second fiancé(e) petition within the two-year window with new evidence addressing the consulate's concerns. As such, we agree that the circumstances surrounding the filing of the Petitioner's second fiancé(e) petition are distinguishable from the concerns IMBRA addresses by imposing a filing limitation.

The record as supplemented on appeal contains substantial and probative evidence that the parties have established a life together, that they share common interests and future goals, have spent considerable time together, and that the Petitioner's family and friends are supportive of their relationship. The record also contains evidence to establish that the parties have invested in a shared future, with the Beneficiary spending time in the United States to take medical license examinations and the Petitioner providing financial and emotional support during those times. The record contains voluminous photographic evidence of the parties spending time together alone and with the Petitioner's family in the United States. Furthermore, the Beneficiary provided a detailed and credible statement with supporting evidence addressing the concerns raised during his consular interview. Finally, the Petitioner has provided specific details to establish that the parties have made plans to marry upon the Beneficiary's arrival to the United States and within the requisite 90-day period. As such, the Petitioner's request for a discretionary waiver of the IMBRA filing limitation is granted, and

⁵ *Id.*

⁶ *See* [REDACTED] filed February 21, 2018 and approved August 28, 2018.

the Director's contrary decision is hereby withdrawn. The matter will be returned to the Director so that this petition may be adjudicated on its merits.

III. CONCLUSION

The Petitioner has established that a discretionary waiver of the relevant IMBRA limitation is warranted. The matter will be remanded so that this petition may be adjudicated on its merits.

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