U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8797521

Date: MAY 26, 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 that the parties personally met within the two-year period immediately preceding the filing of the petition or that he merits a discretionary waiver of the personal meeting requirement.

On appeal, the Petitioner asserts the Director erred in denying a discretionary waiver of the in-person meeting requirement and submits additional affidavits and an appeal brief in support. Upon de novo review, we will dismiss the appeal.

I. LAW

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.[2]

II. ANALYSIS

The Petitioner filed the fiancé(e) petition on February 26, 2019 and requested a waiver of the two year in person meeting requirement. The Petitioner asserts that compliance with the requirement would

[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] Id.; 8 C.F.R. § 214.2(k)(2).

violate strict and long-established customs of the Beneficiary's foreign culture or social practice. The Petitioner also states he was unable to travel to meet the Beneficiary because he could not leave his ill father, he has health issues preventing his travel, and his passport was taken from him. However, many of the Petitioner's assertions are unsupported by the record and raise inconsistencies that weigh against the overall credibility of the evidence provided.

The Director's request for evidence (RFE) notified the Petitioner that he would need to provide additional evidence whether the in-person meeting requirement would violate the parties' customs, culture, or social practice. In response to the RFE, the Petitioner submitted affidavits from the Beneficiary and the Petitioner's sister stating it was against "Islamic practices" for the bride and groom to meet. However, in the denial, the Director discussed that the Petitioner had not established that compliance with the in-person meeting requirement, such as meeting in the presence of family members, would violate strict and long-established customs.[3] On appeal, the Petitioner asserts the Beneficiary's community practices are "conservative" and provides an affidavit from a congressman for the [redacted] local government, who attests that "according to their religious customs, [the parties'] family elders d[o] not allow them to meet by themselves prior to their marriage . . ." (emphasis added). The congressman's statements do not clarify whether the parties would be able to meet with family members present.

The Petitioner also submits an affidavit from a Lead Imam, who attends the same mosque as the Beneficiary. The Imam states, "[t]he elders from both sides of family do not allow a man and woman to meet before marriage. A couple can only express their feelings from a distance." However, the parties' own declarations contradict the Imam's affidavit as they both make statements evidencing an intent to meet, with no mention of customs, culture, or social practice restrictions. For example, the Petitioner states the Beneficiary, "applied for nonimmigrant visa[s] in 2016, 2017, and 2018 to come to the United states to meet me and take care of my father" (emphasis added) and "I have not been able to visit [the Beneficiary] because I could not travel to Pakistan." When describing the reason for why the Petitioner did not attend his engagement, both he and the Beneficiary state it was due to the Petitioner not having a passport and neither mentions any cultural or social restraints. It was not until the RFE response that the Beneficiary noted cultural restrictions against meeting, but then she explains how both families planned a trip to [redacted] so the Petitioner's father could be "with all family." The Beneficiary adds, the Petitioner "desperately wanted to join this trip with his family as well as my family," implying familial consent for the two parties' to meet in the presence of family members. These inconsistencies in the record are not explained and as a result the Petitioner has not met his burden to establish that compliance with the in-person meeting would violate strict and long-established customs of the Beneficiary's foreign culture or social practice.[4]

[3] The Director explained that based on information provided by the Imam Islamic Foundation of North America and gained from other similar applications, it is permissible for the parties to see each other in the presence of their families for finalizing the decision of marriage.

[4] The Petitioner must resolve inconsistencies 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). Evidence that the Petitioner creates after USCIS points out the deficiencies in the petition will not be considered independent and objective evidence. Necessarily, independent and objective evidence would be evidence that is contemporaneous with the event to be proven and existent at the time of the Director's notice.

In asserting extreme hardship, the Petitioner states "[d]ue to my father's serious health conditions, I could not travel to Pakistan, leaving him alone in the United States." The Petitioner describes how the health system in Pakistan would not provide adequate care for his father's health issues. However, the record evidences that the Petitioner's father traveled to Pakistan to arrange the Petitioner's engagement to the Beneficiary and to [redacted] to be with the Beneficiary's family, and intended to return to Pakistan to live, evidencing that he could have traveled with the Petitioner. In addition, according to letters and affidavits in the record, the Petitioner's father was not without other family around him, as he had a daughter that lived in the same town, and the Petitioner's father acknowledged that he could obtain home aid through Medicaid. The Petitioner's assertions that his father's health prevented him from traveling are therefore not supported by the record.

The Petitioner also states that he suffers from neck pain and headaches that prevent him from traveling, but, again, his assertions are not supported by the record. The medical documentation provided do not readily evidence a condition that would prevent traveling[5] and the doctor's note from 2017 recommends rest for the Petitioner, making no reference to avoiding travel.

The Petitioner further asserts he was unable to travel because he does not have a passport, which created an "exceptional circumstance" that the Director did not consider. The Petitioner however does not clearly explain how this exceptional circumstance translates into extreme hardship. Throughout the record the Petitioner states, child support services "prevented" him from traveling by "taking away" his passport in 2014. According to the Petitioner's Judgement of Divorce, the Petitioner's ex-wife had custody of their 6 children, no spousal support was requested and the Petitioner was to pay $350 per week in child support. As of November 2017, according to a letter by the New Jersey Office of Child Support Services, the Petitioner was denied issuance of a passport because he was over forty-four thousand dollars in child support arrears.[6] The Petitioner explains he "worked very hard to pay the child support every week . . . [but his] income was not enough to pay the child support." However, a few paragraphs later, the Petitioner's affidavit describes how he has sent money to support the Beneficiary and her family monthly since 2016[7] and his family prepared engagement gifts such as "rings, gold set, bracelets, and special foods" to the Beneficiary. The Petitioner's inability to travel is the consequence of him not meeting his child support obligations. However, the Petitioner does not provide sufficient evidence explaining the circumstances surrounding his inability to pay child support, for example, whether it stemmed from financial hardship, or how payments to lower the arrears amount would result in extreme hardship for him.

A petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence.[8] 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

[5] The Petitioner provided results from various tests and scans he underwent. The documentation does not flag any conditions, other than a letter dated July 27, 2016, which indicates "moderate multilevel spondylosis in the lower cervical spine, most pronounced at C5-C6." An explanation of the condition, its recommended treatment or how it affects the Petitioner is not provided.

[6] The Judgement of Divorce was amended and finalized in 2018, with the parties agreeing to a monthly child support amount of $200. It is unclear from the divorce documentation when the Petitioner was ordered to pay child support, however, the Petitioner states he began paying in 2006.

[7] The record contains 5 money transfer receipts, evidencing the transfer of funds ranging from $200-500 dollars monthly.

[8] See Matter of Chawathe, 25 I& N Dec. 369, 375-76 (AAO 2010).

credibility) of the evidence.[9] There are inconsistencies in the record that undermine the credibility of the Petitioner's assertions and the Petitioner did not provide sufficient evidence to establish his assertions. For these reasons, the record does not demonstrate 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 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.

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