



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

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

In Re: 7605175

Date: MAY 27, 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 had not established the Beneficiary's ability to marry, is subject to a statutory bar based on previously filed fiancé(e) petitions, and he did not establish justification for a discretionary waiver of such bar.

On appeal, the Petitioner presents a letter and documentation in support of the waiver, including further evidence relating to the *bona fides* of his relationship with the Beneficiary.

Upon *de novo* review, 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.

Further, section 214(d)(2)(A) of the Act precludes approval of a petition if a petitioner has: (1) previously filed a fiancé(e) petition for two or more foreign national fiancé(e)s before filing the instant fiancé(e) petition, or (2) less than two years have passed since the filing date of a previously-

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).

approved fiancé(e) petition.² Section 214(d)(2)(B) provides a discretionary waiver of these limitations “if justification exists.”³

II. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner has not established eligibility pursuant to Section 214(d) of the Act.⁴ Specifically, the record (1) does not contain sufficient evidence regarding the Beneficiary’s age, identity and thereby her ability to marry; and (2) has inconsistencies that undermine the Petitioner’s evidence submitted in support of a discretionary waiver of the IMBRA limitation.⁵

On December 15, 2016, the Petitioner filed a fiancé(e) petition [REDACTED] for the Beneficiary, which was approved on July 28, 2017. The U.S. embassy in Vientiane, Laos, declined to issue a nonimmigrant visa to the Beneficiary and returned the petition to USCIS recommending revocation of the approval, as the Beneficiary was unable to verify her testimony and documentary evidence regarding her age. Prior to its return to USCIS, the petition’s four-month validity period had expired and it was terminated. On June 1, 2018, the Petitioner filed the current fiancé(e) petition for the Beneficiary.

The Director issued a request for evidence (RFE) and specifically requested an explanation of the Beneficiary’s inability “to establish her age and, thus, her identity” at her visa interview and her production of “newly issued” and “backdated” documents in response to the Department of State’s request for school records. In the RFE response, the Petitioner identified the Beneficiary’s birthdate and referenced the “residency book” kept by the head of the village as supporting evidence. However, the family registration book was previously provided to the Department of State and was not found probative in establishing the Beneficiary’s age. The Petitioner appears aware of the document’s previous production as he alludes to it being provided during the visa interview in his response to the RFE. The Petitioner’s response also stated that the Beneficiary “was unable to get the actual school records” because “[a] [r]ural village in Laos does not have the means to keep school records.” The Petitioner provided no supporting affidavits from the school or any authoritative source to support his statements.

² Sections 214(d)(2) and (3) of the Act were added by 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.” Accordingly, these limitations are commonly known as IMBRA provisions, for the International Marriage Broker Regulation Act.

³ 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 for Domestic Operations, USCIS, HQPRD 70/6.2.11, *International Marriage Broker Regulation Act Implementation Guidance 2* (July 21, 2006). <https://www.uscis.gov/sites/default/files/document/memos/imbra072106.pdf>.

⁴ The record establishes that the parties have previously met in person within two years before the date of filing the fiancé(e) petition.

⁵ Although we may not discuss every document submitted in support of the fiancé(e) petition, we have reviewed and considered each one.

The denial explained that the date of birth is an important material fact used to determine the petitioner's or the beneficiary's legal ability to marry, and the Petitioner "did not comment on the documents suspected by the Department of State of being backdated." On appeal, the Petitioner submits documents for the Beneficiary, which include her identification card, family registration book, passport, and primary school tracking record. However, these documents were issued prior to the Beneficiary's visa interview and therefore the Petitioner should be aware they were previously provided to the Department of State. The legitimacy of these documents is already in question, and the Petitioner does not include evidence to corroborate the authenticity of these documents.

With respect to the Beneficiary's student records, the Petitioner states on appeal that the Beneficiary's parents did not keep copies of her school records and that she dropped out of school at the age of 13 years. He states the Beneficiary's student records are not originals. He provides a photograph of women outside of a wooden building and states "as you can see the school photo, that record keeping was non-existing at the time she attended school." It is not clear that the photograph is one of the Beneficiary at school and it would seem inconsistent for the Beneficiary to maintain photographs of herself at school but not her school records. Moreover, the photograph does not have any supporting detail to evidence it is in fact a school or where its records are maintained. The Petitioner further states "[w]hat the school provided her was just verification that she was a former student. Her photo was attached to the document with a stamp so no one else can't use." The Petitioner does not describe how the Beneficiary's identification was authenticated prior to the issuance of the school documents and how the school was able to reliably recreate the document without a prior record.

Furthermore, the Petitioner's statements on appeal regarding the family registration book raises additional reliability concerns as he notes several discrepancies in the translation, including that an older sister born in 1993 was taken out of the family registration book. There is no indication of this sibling's entry or its removal in the translated copy. Nor does the record explain the whereabouts of the original family registration book. Instead, there is a document dated July 12, 2016 entitled "Alteration" that says the family "has been to change new Household registration Book, the old Household Registration Book is filthy." There also appears to be a photograph of page 18 of the old book, but context is not provided around this photograph.

A petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence.⁶ Here, the Petitioner has not provided reliable and sufficient evidence to establish the Beneficiary's age and identity, and thereby her ability to marry, pursuant to section 214(d)(1) of the Act.⁷

⁶ *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

⁷ According to the Petitioner's response to the RFE, "[a]s [of] March 01, 2019, [the Beneficiary] will be 2 years older since [she] last interviewed with the US Embassy in Laos." However, even if the Beneficiary is older, it does not resolve her current age and identity or cure the concerns of misrepresentation in the record. More specifically, the Beneficiary made representations of her age and identity and provided documents to the Department of State that the parties have been unable to corroborate. The parties similarly made statements in petitions before USCIS and submitted documents that remain unauthenticated. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies and 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. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

While the Petitioner's appeal could be dismissed on these grounds alone, we will also address the basis for the Director's denial, which is whether the Petitioner merits a discretionary waiver of the IMBRA limitations.

In addition to the two petitions filed on the Beneficiary's behalf, the Petitioner also filed a fiancé(e) visa petition for [REDACTED] on January 29, 2003, which was approved on March 13, 2003. Accordingly, the Petitioner is subject to the IMBRA limitations both because he previously filed fiancé(e) petitions for two individuals and because he received the approval of a prior fiancé(e) petition and less than two years had passed since the filing date of that petition.⁸ The Director's RFE provided the Petitioner with an opportunity to submit a request to waive the IMBRA limitations and to submit evidence to show that the petition merits a favorable exercise of discretion to waive those limitations and establish a bona fide intention to marry. In his response to the RFE, the Petitioner submitted a waiver request and evidence to establish the *bona fides* of the relationship.⁹

As noted above, the IMBRA limitations may be waived if justification exists.¹⁰ In our discretionary analysis, we look to whether a petitioner specifically describes the reasons for filing multiple fiancé(e) petitions and explains the outcome of those petitions. In addition, we also consider whether unusual circumstances exist.¹¹ The Petitioner's first fiancé(e) petition was in 2003 and the record establishes the Petitioner married his then fiancé and that marriage terminated in 2016. The second fiancé(e) petition was on behalf of the Beneficiary and there were concerns raised over the authenticity of the Beneficiary's identity documents which appeared to be back dated. The explanation provided by the Petitioner and the evidence provided do not explain or cure the defects raised by the Department of State. Moreover, the inconsistencies cast doubt on the Petitioner's evidence as a whole¹² that is not overcome by other evidence to merit a favorable exercise of discretion to waive the IMBRA limitation.

III. CONCLUSION

The Petitioner has not established that the Beneficiary has the ability to marry or merits a discretionary waiver of the relevant IMBRA limitation.

ORDER: The appeal is dismissed.

⁸ See section 214(d)(2)(A) of the Act.

⁹ The Petitioner's RFE response contained an explanation that he has traveled to see the Beneficiary many times since May 2016 and brought his two children to spend time with her in 2018, a letter from the Beneficiary stating her intent to marry him, a judgment of divorce from his previous marriage, bank records, and statements regarding his financial assets and employment history. On appeal the Petitioner also submits photographs of the parties on video calls together and an explanation of their wedding plans.

¹⁰ See section 214(d)(2)(B) of the Act.

¹¹ See Aytes Memorandum, *supra*, at 3.

¹² Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. See *Matter of Ho*, at 591.