U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17762233

Date: SEP. 1, 2021

Appeal of a 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. 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). A U.S. citizen may petition to bring a fiancée to the United States in K-1 status for marriage.

The Director of the California Service Center ultimately denied the petition, concluding that the Petitioner was not eligible to conclude a legally valid marriage at the time of filing. On appeal, the Petitioner states he is in the process of obtaining the evidence requested by USCIS and submits additional evidence.

The matter is now before us on appeal. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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.

The regulation at 8 C.F.R. § 103.2(b)(1) states that an applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition.

II. ANALYSIS

The Director of the California Service Center initially denied the fiancé(e) petition, concluding the Petitioner is subject to the International Marriage Broker Regulation Act of 2005 (IMBRA) filing limitations. The Petitioner appealed the petition, but the AAO rejected the appeal as untimely.

The Director determined, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), that the untimely appeal met the requirements of a motion to reconsider. According to the Director, her prior decision had not been "completely correct" and she vacated it. She still ultimately denied the petition, however, concluding that the Petitioner had not demonstrated his eligibility to conclude a valid marriage with the Beneficiary at the time of the initial filing.

In arriving at this conclusion, the Director stated that the Petitioner did not disclose his prior marriage to his former spouse on the fiancé(e) petition. The Director requested that the Petitioner provide a final divorce degree between he and the former spouse. With his response, the Petitioner asserted the courts in Thailand dissolved his marriage with his former spouse; the marriage was automatically dissolved due to abandonment; and that he is "free to remarry" in the United States. However, the Petitioner did not provide any substantive evidence to support his assertions or to show he was legally divorced from his former spouse. The Director therefore again denied the fiancé(e) petition by concluding the Petitioner did not demonstrate the ability to enter a prospective marriage at the time of filing.

On appeal, the Petitioner asserts he has hired a divorce attorney and is in the process of obtaining a final divorce decree. In support, the Petitioner submits a brief, his personal statement, his retainer agreement with his attorney, and the divorce documents filed with the court on the Petitioner's behalf.[1] The Petitioner states that once the divorce process is completed, a final divorce degree will be signed by the court judges.

Although we acknowledge the Petitioner is taking steps to complete his divorce from his former spouse, the Petitioner has not demonstrated that, at the time of filing, he was legally able to conclude a valid marriage with the Beneficiary.[2] The Petitioner has not provided any evidence that he was legally divorced from his former spouse at the time of filing. Although the Petitioner previously asserted that he was "free to remarry" and that his marriage was dissolved, his statements alone, without any substantive documentation, are insufficient. Even if the Petitioner was to receive his legal divorce decree now, the divorce document would not demonstrate he was legally able to marry at the time filing. Therefore, the Petitioner has not demonstrated the parties were legally able to conclude a valid marriage at the time of filing pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. §§ 214.2(k)(2) and § 103.2(b)(1).

III. CONCLUSION

The Petitioner has not established that he would have been able to conclude a valid marriage to the Beneficiary in the United States at the time of filing. As such, the Petitioner has not met the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant and the appeal is dismissed. We note, however, that the denial of this petition is without prejudice to the filing of another fiancé(e) petition at a future date once the statutory requirements are met.

[1] The Petitioner submitted the following court documents with his appeal: two motions for service by publication, an affidavit by service of publication, a notice of publication, a general civil and domestic relations case filing information form, complaint for divorce, a standing order, and a summons.

[2] As mentioned, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit they are seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1).

ORDER: The appeal is dismissed.