



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

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

In Re: 23091089; 23103185

Date: DEC. 07, 2022

Motion on Administrative Appeals Office Decision

Form I-129F, Petition for Alien Fiancé(e)

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary as his fiancée. Immigration and Nationality Act (the Act) section 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). A U.S. citizen may petition to bring a fiancée to the United States in K nonimmigrant visa status for marriage. The U.S. citizen must establish that the parties have previously met in person within two years before the date of filing the 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 90 days of admission. Section 214(d)(1) of the Act.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner and Beneficiary had met in person in the two years preceding the filing of the petition or that the Petitioner merited a discretionary waiver of this requirement. The Petitioner appealed the decision, and we dismissed for the same reasons. We further found that the Petitioner had not established the Beneficiary's *bona fide* intention to marry the Petitioner. The matter is now before us on a combined motion to reopen and reconsider.¹

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss both motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the

¹ The Petitioner submitted two nearly identical Forms I-290B, Notice of Appeal or Motion, requesting reopening and reconsideration of our prior decision. We will adjudicate both motions in this single decision.

time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

In order to classify a beneficiary as their fiancée, a petitioner must establish that both parties have met in person in the two years preceding the date of filing the petition, have a *bona fide* intention to marry within 90 days of the fiancée's admission to the United States, and are legally able and actually willing to conclude a valid marriage at that time. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1).

As a matter of discretion, U.S. Citizenship and Immigration Services may exempt a petitioner from the in-person meeting requirement only if the petitioner establishes that compliance would result in extreme hardship to the petitioner or if compliance would violate strict and long-established customs of a beneficiary's foreign culture or social practice. Failure to establish that the parties have met in person within the required period or that the requirement should be waived shall result in denial of the petition. 8 C.F.R. § 214.2(k)(2).

II. ANALYSIS

A. Motion to Reopen

In our prior decision, we found that the Petitioner had not established that his heat intolerance would cause him extreme hardship if he were to comply with the in-person meeting requirement and that he should therefore receive a discretionary exemption from that requirement. We further found that he had not established the Beneficiary's *bona fide* intention to marry him within 90 days of her arrival in the United States.

On motion, the Petitioner submits new documentation of his 2022 trip to Cambodia to meet the Beneficiary. However, the regulation at 8 C.F.R. § 214.2(k)(2) requires the parties to meet in person in the two years prior to the filing of the fiancée petition. A Petitioner must establish that they are eligible for the requested benefit at the time of filing. 8 C.F.R. § 103.2(b)(1). Because the petition in this case was filed in 2021, the Petitioner's meeting with the Beneficiary in 2022 does not fulfill the in-person meeting requirement.

The evidence submitted on motion also includes a medical certificate and medical information form completed by a doctor in Cambodia in March 2022. These documents state that while the Petitioner suffers from extreme heat intolerance, he is fit to travel so long as he is kept cool through means such as ice packs. Because the evidence indicates that the Petitioner was able to travel to Cambodia with minor accommodations for his heat intolerance, it does not establish that complying with the in-person meeting requirement prior to filing would have caused the Petitioner extreme hardship.

The Petitioner also has not submitted sufficient documentation to establish the Beneficiary's *bona fide* intention to marry. In our prior decision, we noted that despite a claimed years-long relationship, the record contains no documentation of any direct communication between the parties, wedding plans, or statement from the Beneficiary herself regarding the relationship. The photographs submitted on motion do not suffice to overcome these concerns.

The Petitioner has not submitted new facts which establish his eligibility for the requested benefit. Therefore, the motion to reopen will be dismissed.

B. Motion to Reconsider

On motion, the Petitioner does not specify any incorrect application of law or policy in our prior decision. As explained above, the medical evidence provided indicates that the Petitioner was able to meet the Beneficiary in person without undergoing extreme hardship. Furthermore, all of the evidence submitted on motion was created after our prior decision, and so was not part of the record of proceedings at the time of that decision.

The Petitioner has not established that our decision was based on an incorrect application of law or policy based on the evidence on record at the time of the decision. Therefore, the motion to reconsider is dismissed.

III. CONCLUSION

The Petitioner has not overcome the grounds of our prior decision. The new evidence provided on motion does not establish that the parties met in person in the two years preceding the filing of the fiancée petition or that the Petitioner would have experienced extreme hardship by complying with this requirement. It also does not establish the Beneficiary's *bona fide* intention to marry the Petitioner within 90 days of arriving in the United States. Therefore, the Petitioner has not met the requirements for a motion to reopen. Furthermore, the Petitioner has not established that our prior decision was based on an incorrect application of law or policy, and so has not met the requirements for a motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.