U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19815386

Date: JAN. 6, 2022

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 denied Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), concluding that the Petitioner did not provide sufficient documentation of an in-person meeting with the Beneficiary during the two-year period prior to filing the petition or that he merits a discretionary waiver of the personal meeting requirement. The Director also found that the Petitioner did not establish that the Beneficiary was legally able to conclude a valid marriage at the time of the filing, because the record did not include evidence that the Beneficiary's previous marriage was legally terminated. On appeal, the Petitioner provides a statement and provides additional evidence.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews 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. 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. Id.; 8 C.F.R. § 214.2(k)(2).

II. ANALYSIS

The Petitioner filed the fiancé(e) petition on behalf of the Beneficiary on March 24, 2020, and submitted among other evidence, photos, an airline itinerary, boarding passes, a partial copy of the Petitioner's passport, and a translation of the Beneficiary's divorce decree. The Director found this evidence insufficient to establish eligibility for the benefit sought, and issued a request for evidence (RFE) that solicited, in part, evidence that the Petitioner and the Beneficiary met in person during the two years immediately preceding the filing of the petition, or that a personal meeting within the relevant period would result in extreme hardship to the Petitioner or violate the Beneficiary's strict and long-established customs, foreign culture, or social practice. The RFE also instructed the Petitioner to provide an original language copy of the Beneficiary's divorce decree from her previous spouse.[1]

The Petitioner responded to the RFE with additional evidence, including a statement from the Petitioner. However, the Director determined that the record did not establish that he and the Beneficiary had personally met within the two-year period immediately prior to filing the petition. Specifically, the Director highlighted the Petitioner's statement, in which he acknowledges that he had "not been together with [the Beneficiary] during the month [sic] of March 25, 2018 and ended March 24, 2020." Moreover, the Director found that the record did not establish whether the Beneficiary was legally able to enter into a valid marriage. On appeal, the Petitioner submits the Beneficiary's Lao divorce certificate as evidence that she has the ability to legally marry.

The evidence in the record is insufficient to establish the Petitioner and the Beneficiary met in person within the two-year period preceding the filing of the fiancé(e) petition. Most importantly, the Petitioner stated that he had not "been" with the Beneficiary during the required period of time. As the Petitioner did not provide any clarification or other information regarding his statement, the Petitioner appears to acknowledge he did not meet with the Beneficiary within the designated timeframe. Even if we were to set that deficiency aside, we would still conclude that the other documents were insufficient to establish that the parties met within the requisite period. None of the photos were dated but one, and it bore the date February 24, 2017, which was outside the requisite two-year period. Though one boarding pass does show travel from Laos, it does not provide the year of travel. The other boarding passes and airline itinerary do not show any travel to Laos. While the entry and exit stamps in the Petitioner's passport do establish he was in Laos during the relevant two-year period, they are alone insufficient to demonstrate that the Petitioner met with the Beneficiary during that time. Because of all these reasons, the Petitioner has not met his burden to establish the parties meet within the required two-year period.

In addition, the Petitioner has not established that the Beneficiary lawfully divorced her prior husband and was to conclude a valid marriage at the time of filing. It does not appear as though the Petitioner has provided an original language copy of the Beneficiary's divorce decree, as requested. Absent the original language document, the submitted translation of the divorce decree in itself is insufficient.

[1] Although the Petitioner included a translation of the Beneficiary's divorce decree with the fiancé(e) petition, a copy of the actual document was not submitted.

While the Lao divorce certificate submitted on appeal is acknowledged, we observe that it was issued by the "Head of Home Affairs Office of District," Chanthabouly District, Lao People's Democratic Republic. However, according to the U.S. Department of State (DOS), "[a] divorce decree must be issued by the court in the district where the couple is resident for a divorce to be final. A divorce certificate issued by a village or district official that is not a member of the court is not sufficient."[2] Because the Beneficiary's divorce certificate was issued by the "Head of Home Affairs Office of District" and the record does not establish that this individual is "a member of the court" in the district where the Beneficiary and her ex-spouse resided as DOS states is necessary, this certificate is not sufficient to demonstrate the legal termination of her prior marriage.

Finally, though not discussed by the Director, we also conclude that the Petitioner has not established the Beneficiary's intent to marry the Petitioner within 90 days of admission into the United States. Specifically, the Petitioner does not submit any evidence from the Beneficiary herself articulating her intention to marry him within 90 days of her admission into the United States, as required by the Act and relevant form instructions.[3] The Petitioner provided a Lao record of engagement; however, it does not indicate the parties would marry within 90 days of her admission into the United States. In the absence of a statement from the Beneficiary regarding for her intention to marry the Petitioner within the requisite timeframe, or other evidence indicative of the same, the Petitioner has not met the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant.

III. CONCLUSION

The Petitioner has not established: (1) that the parties met in person within the two-year timeframe preceding the filing of the fiancé(e) petition, or that a discretionary waiver of that requirement is warranted; (2) that the Beneficiary is legally able to conclude a valid marriage in the United States at the time of filing, and (3) that the Beneficiary intends to marry the Petitioner within 90 days of her admission into the United States. 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.

ORDER: The appeal is dismissed.

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[2] U.S. Department of State, Bureau of Consular Affairs, U.S. Visa: Reciprocity and Civil Documents by Country: Lao People's Democratic Republic, available at https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/LaoPeoplesDemocraticRepublic.html (last visited Jan. 6, 2022).

[3] Evidence of an intention to marry may include statements of intent to marry signed by both the petitioner and the beneficiary or any other evidence that establishes mutual intent. Form I-129F, Instructions for Petition for Alien Fiancé(e), at 11 (reiterating the requirement that the petitioner must submit evidence of a bona fide intention to marry); see also 8 C.F.R. § 103.2(a)(1) (providing that "[e]very form, benefit request, or other document must be submitted . . . and executed in accordance with the form instructions" and that a "form's instructions are . . . incorporated into the regulations requiring its submission").