



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 17514002

Date: JAN. 14, 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 fiancé to the United States in K-1 status for marriage. The petitioner must establish, among other things, that the parties have previously met within two years before the date of filing the petition, have a bona fide intention to marry, and are willing and legally able to conclude a valid marriage in the United States within 90 days of the fiancée's admission. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1).

The Director of the California Service Center denied the Form I-129F, Petition for Alien Fiancé(e) (fiancé(e) petition), concluding that the Petitioner is not legally able to conclude a valid marriage with the Beneficiary. On appeal, the Petitioner contests the decision and provides a brief.

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 remand the matter for further action.

I. LEGAL FRAMEWORK

As noted, section 214(d)(1) of the Act requires a petitioner to demonstrate the legal ability to conclude a valid marriage in the United States within 90 days of the fiancée's admission.

A marriage will be valid for immigration purposes only where the prior marriages of either party have been legally terminated and both individuals are free to contract a new marriage. *Matter of Hann*, 18 I&N Dec. 196, 198 (BIA 1982). Both the petitioner and beneficiary must be unmarried and free to conclude a valid marriage at the time the fiancé(e) petition is filed. *Matter of Souza*, 14 I&N Dec. 1, 3 (Reg'l Comm'r 1972); see also 8 C.F.R. § 103.2(b)(1) (providing that a petitioner must establish eligibility for an immigration benefit at the time of filing the benefit request). Finally, if the Petitioner relies on state law to establish eligibility for an immigration benefit, the law itself is a question of fact

that must be proved by the Petitioner. Cf. Matter of Annang, 14 I&N Dec. 502 (BIA 1973) (discussing a petitioner’s burden to prove questions of foreign law).

II. ANALYSIS

The Director’s determination that the record before her did not establish the Petitioner’s legal ability to conclude a marriage in the United States was based on her reading of a stipulation and order signed by a judge of the [redacted] Superior Court on [redacted] 2019. We do not agree with the Director’s reading.

As the Petitioner notes on appeal, family courts in the State of California are permitted to “bifurcate” an issue and try it separately before other issues are resolved. See generally Cal. Family Code § 2337(a) (West 2016) (“In a proceeding for dissolution of marriage, the court, upon noticed motion, may sever and grant an early and separate trial on the issue of the dissolution of the status of the marriage apart from other issues.”). The California Rules of Court discuss bifurcation at rule 5.390. The first subsection states that a court may bifurcate one or more issues to be tried separately before other issues are tried as part of a request for order by one of the parties, as part of a stipulation by the parties, for reasons of case management, or by court’s own motion. Cal. Rules of Court, rule 5.390(a). “Termination of [the] status of a marriage” is specifically referenced as an issue “that may be appropriate to try separately in advance.” Id. at rule 5.390(b).

The Petitioner and his ex-spouse agreed in paragraph 1 of the stipulation and order to bifurcate the issue of their marital status, and in paragraph 7 they agreed that the court could enter a judgment terminating their marital status without additional notice. In paragraph 3, they agreed that the termination of marital status would not be effective until after the stipulation and order was filed, which took place on [redacted] 2019.

In agreeing to bifurcate the issue of their marital status and resolve it separately before the other issues, the Petitioner and his ex-spouse agreed to several conditions. For example, pursuant to paragraph 4 the Petitioner was bound to most of the conditions contained in Cal. Family Code §§ 2337(c) and (d) until the remaining issues (those apart from marital status) were resolved.

The Director found the stipulation and order insufficient to establish the Petitioner’s legal ability to conclude a new marriage in the United States. The Director first stated that “[a]lthough the [stipulation and order] notes that [the Petitioner and his ex-spouse] were entitled to a judgment of final dissolution of the marriage, [it] does not actually contain evidence that the final judgment of divorce or dissolution was ever granted or finalized.” We do not agree. The stipulation and order acted to adjudicate the issue of the couple’s marital status, while reserving the remaining contested issues for another day (for example, paragraph 5 referenced division of community property, attorney’s fees and costs, child support, and child custody and visitation). Upon the filing of the stipulation and order with the Clerk of the [redacted] Superior Court on [redacted] 2019, the couple’s marital status was dissolved. Moreover, the stipulation and order specifically accommodates the Petitioner’s potential remarriage prior to the resolution of the remaining contested issues: for example, it states at paragraph 8 that until those issues are resolved the Petitioner “shall not be permitted to file or seek to modify or reduce a spousal support obligation, if any, to [his ex-spouse], on the basis that as a result of his new

marriage or cohabitating with any person, he has assumed additional obligations or expense which diminishes his financial ability to continue or pay support and maintenance of [his ex-spouse].”

Next, the Director pointed to paragraph 9 of the stipulation and order, which involved the Petitioner and his ex-spouse agreeing that until all outstanding issues were resolved they would still be considered “husband and wife” for purposes of Cal. Family Code § 721 (contracts with each other and third parties) and Cal. Family Code § 1100 et seq. (management and control of marital property). The Director stated the following: “[the Petitioner] did not submit any evidence demonstrating that the remaining issues referenced in the noted section were resolved and that a judgment was rendered and finalized in order to effect the stipulations of the [stipulation and order] you submitted.”

Again, we disagree with the Director’s reading of the stipulation and order. Because it is a final adjudication of the couple’s marital status, this document is a de facto final divorce decree for purposes of establishing the Petitioner’s legal ability to conclude a marriage in the United States pursuant to section 214(d)(1) of the Act. It is not evidence of a divorce nisi, as the Director seems to imply. If the Petitioner fails to comply with the terms and conditions the Director highlights, his ex-spouse would be able to recover monetary damages pursuant to paragraph 10, but their marital status would not revert.

We therefore disagree with the reasoning underlying the Director’s decision and hereby withdraw it. The matter will be remanded back to the Director for further processing so that adjudication of the Petitioner’s fiancé(e) petition may continue. The Director may request any additional evidence considered pertinent to the new determination and any other issue, and we express no opinion regarding the ultimate resolution of this case overall. But as the issue relates to his relationship with his ex-spouse, the Petitioner is legally free to conclude a valid marriage in the United States.

ORDER: The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.