U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19081221

Date: JAN. 28, 2022

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. 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(e) 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 fiancé(e)'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 did not submit sufficient evidence to establish that the relationship between the Petitioner and Beneficiary was genuine and they have a bona fide intention to marry. The Director noted that most of the evidence provided was related to the Beneficiary's past marriages and that the Petitioner did not submit affidavits from family members.

On appeal, the Petitioner presents additional evidence and maintains that she has demonstrated eligibility to classify the Beneficiary as a K-1 nonimmigrant. The new evidence submitted on appeal includes affidavits from family members and friends, photographs, correspondence, and documentation that purports to speak to the authenticity of their relationship. The Petitioner asserts that this new evidence, when considered together with the previously submitted documents, demonstrates eligibility for the fiancé(e) visa.

We conduct de novo review on appeal. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). We conclude this new evidence is directly relevant to the Petitioner's eligibility claim and will therefore remand the matter for the Director to consider whether the Petitioner has established that she and the Beneficiary have a bona fide intention to marry, 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 and have otherwise met the other statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant. Further, the Director may wish to further review the record to determine if there is substantial and probative evidence that the Beneficiary has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. It is well established that a visa

petition may be denied pursuant to section 204(c)(2) of the Act, 8 U.S.C. § 1154(c)(2), where there is evidence in the record to indicate that a noncitizen previously conspired to enter into a fraudulent marriage. See Matter of Laureano, 19 I&N Dec. 1 (BIA 1983). However, evidence of a fraudulent marriage "must be documented in the [noncitizen]'s file and must be substantial and probative." Matter of Tawfik, 20 I&N Dec. 166, 167 (BIA 1990). Where the record contains evidence that a visa petition was previously filed seeking immigration benefits based on a fraudulent marriage, the burden then shifts to the petitioner to prove that the beneficiary had not sought to circumvent the immigration laws based on that prior marriage. See Matter of Kahy, 19 I&N Dec. 803 (1993).

The Director may request any additional evidence considered pertinent to the new determination and any other issue. As such, we express no opinion regarding the ultimate resolution of this case on remand.

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