U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21462627

Date: JUN. 09, 2022

Appeal of California Service Center Decision

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

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary as his fiancé. 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 fiancé(e) 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.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner was legally free to enter into a marriage; that that the parties had a *bona fide* intention to marry; that the parties had met in person within two years before the date of filing the petition or that the Petitioner qualified for a waiver of the two-year in-person meeting requirement; or that the Petitioner qualified for a waiver from the International Marriage Broker Regulation Act of 2005 (IMBRA) regulations regarding multiple filings of fiancé petitions.[1] The matter is now before us on appeal.

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 *de novo* review, we will dismiss the appeal.

I. LAW

In order to classify a beneficiary as their fiancé(e), 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).

To help ensure that fiancé visas are reserved for *bona fide* relationships, the Act does not allow the approval of a petition if less than two years have passed since the filing of date of a previously-approved fiancé petition. Section 214(d)(2)(A)(ii) of the Act, 8 U.S.C. § 1184(d)(2)(A)(ii). U.S.

[1] This provision is part of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. 109-162, 119 Stat. 2960 (2006).

Citizenship and Immigration Services (USCIS) may provide a discretionary waiver of this limitation if justification exists. *Id.*

II. PROCEDURAL HISTORY

This is the second fiancé petition the Petitioner has filed on behalf of the Beneficiary. The Petitioner filed the first petition in January 2018. USCIS approved it in November 2018 and forwarded the approval to the U.S. Embassy in Manila, Philippines. In January 2019, the Department of State found that the parties had not met their burden to demonstrate a *bona fide* intention to marry, refused the visa petition, and returned the petition to USCIS. The petition was then terminated after its validity period expired.

The Petitioner filed the current petition in October 2019.[2] In February 2020, the Director issued a request for additional evidence (RFE) requesting, in part, evidence that all of the Petitioner's prior marriages had been terminated. In response, the Petitioner provided a statement that he had never been married, as well as a Clerk's Certificate from [redacted] Florida stating that the Petitioner had not applied for a marriage license in that county from January 2014 to March 2020.

In May 2021, the Director issued a second RFE, again requesting evidence that all of the Petitioner's prior marriages had been legally terminated. The second RFE also requested evidence of the parties' *bona fide* intention to marry, evidence that the parties had met in person in the past two years or that the Petitioner should receive a waiver of that requirement,[3] and evidence that the Petitioner should receive a waiver of the fiancé visa filing limitations.

In response, the Petitioner provided an attestation that he had never been married, a statement from the Beneficiary regarding their relationship, screen captures of chats between the Beneficiary and Petitioner, and a request for a waiver of the two-year meeting requirement and the filing limitation regulation. The Director found that the evidence submitted was insufficient to establish eligibility and denied the petition on all of the above-mentioned grounds.

III. ANALYSIS

A. *Bona Fide* Intention to Marry

In order to qualify for the fiancé visa, the Petitioner must demonstrate that he and the Beneficiary have a *bona fide* intention to marry within 90 days of the Beneficiary's entry into the United States. Section 214(d)(1) of the Act. The intended marriage cannot be for the sole purpose of obtaining an immigration benefit.

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[2] It is noted that in July 2019, between the filing of the two fiancé petitions, the Beneficiary was refused a B-2 visitor visa to visit the Petitioner for a claimed two-week period.

[3] We note that the evidence of record indicates that the Petitioner has sole custody of three sons with special needs and medical conditions who require constant supervision and care, and therefore may qualify for a waiver of the two-year meeting requirement. However, because the other issues in this case are dispositive, we need not reach this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("agencies are not required to made findings on issues the decision of which is necessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 527 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The Beneficiary was previously refused a fiancé visa by the State Department because the evidence did not demonstrate a *bona fide* intention to marry. In the present case, the Director again denied the Petitioner on this basis, stating that the brief, undated chat logs, and the statements of the Petitioner and the Beneficiary were insufficient to demonstrate that the parties intended to marry and start a life together.

On appeal, the Petitioner provides an annotated copy of the denial of the underlying petition.[4] The decision includes a handwritten annotation stating that "an affidavit is being developed" regarding the parties' *bona fide* intention to marry. However, this affidavit is not included in the record. The decision includes another annotation stating: "We've been applying for three years now and [are] still not giving up which should prove our intent to marry," as well as an annotation stating that "evidence was submitted" regarding the issue. No other evidence or argument is submitted on appeal regarding this issue.

The burden of proof is on the Petitioner in the current matter. Section 291 of the Act. The Petitioner must support their assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As noted above, when the State Department interviewed the Beneficiary pursuant to the Petitioner's previous fiancé visa petition, they refused his visa for a failure to demonstrate a *bona fide* intention to marry. To document a claimed four-year relationship,[5] the Petitioner has only provided a few pages of undated chat logs and brief statements from himself and the Beneficiary. The fact that the Petitioner has continued to seek a fiancé visa for the Beneficiary, considered in the context of the totality of the evidence, does not establish eligibility in this case.

The Petitioner has not met his burden to establish that he and the Beneficiary have a *bona fide* intention to marry within 90 days of the Beneficiary's entry into the United States. Section 214(d)(1) of the Act.

B. Other Grounds of Denial

The Director also found that the record did not establish that the Petitioner was legally free to enter into a marriage; that the parties had met in person within two years before the date of filing the petition or that the Petitioner qualified for a waiver of the two-year in-person meeting requirement; or that the Petitioner qualified for a waiver from the IMBRA regulations regarding multiple filings of fiancé petitions. However, because the issue of a *bona fide* intention to marry is dispositive, we need not reach these issues and hereby reserve them. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 16 I&N Dec. at 526 n. 7.

[4] The Petitioner stated that he would submit a written brief or statement within 30 days of filing this appeal. Because no brief or statement was received, we base our adjudication on statements made in this annotated decision and on the Petitioner's Form I-290B, Notice of Appeal or Motion.

[5] In the underlying petition, the Petitioner stated that he and the Beneficiary have known each other since October 2017. The current appeal was filed in December 2021.

IV. CONCLUSION

The Petitioner has not met his burden to establish that he and the Beneficiary have a *bona fide* intention to marry within 90 days of the Beneficiary's 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.

ORDER: The appeal is dismissed.