U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21953918

Date: SEP. 19, 2022

Appeal of California Service Center 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.

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner and the Beneficiary had met in person in the two years prior to the filing of the petition or that the Petitioner qualified for a waiver of this requirement. 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.[1]

I. LAW

Section 214(d)(1), 8 U.S.C. § 1184(d)(1) of the Act, states that a fiancé(e) petition can be approved only if, among other requirements, a petitioner establishes that the parties have previously met in person within two years before the filing date of the fiancé(e) petition.

As a matter of discretion, U.S. Citizenship and Immigration Services may exempt a petitioner from this 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).

[1] We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

II. ANALYSIS

On December 11, 2020, the Petitioner filed a Form I-129F, Petition for Alien Fiancé(e), on behalf of the Beneficiary. Therefore, he was required to meet with the Beneficiary in person between December 11, 2018, and December 10, 2020. On Page 8, Question 54, his stated reason for requesting an exemption from the in-person meeting requirement was "Covid-19 Restrictions."[2] On August 13, 2021, the Director sent a request for evidence (RFE) requesting documentation of the parties' *bona fide* intention to marry as well as support for the Petitioner's request for a waiver of the in-person meeting requirement.

Since the Petitioner does not claim that he and the Beneficiary met in person in the two years preceding the filing of the underlying petition, the issue on appeal is whether he qualifies for a waiver of the in-person meeting requirement. On September 24, 2021, the Petitioner submitted documentation including a support letter regarding his relationship with the Beneficiary, two letters and two greeting cards between the parties, and shipping receipts for gifts the Petitioner sent to the Beneficiary. Regarding the in-person meeting requirement, the Petitioner stated:

> It should be noted that [redacted] and I met online via an app called '[redacted]' in March of 2020 and began a relationship during the beginning of the pandemic. Due to travel restrictions, we have not been able to meet and request an exemption to that requirement base [*sic*] on the ongoing circumstances of the pandemic.

On December 1, 2021, the Director denied the petition, finding that the documentation provided was insufficient to establish that COVID-19 travel restrictions would have caused the Petitioner extreme hardship. The Petitioner appealed the decision on December 20, 2021.

On appeal, the Petitioner provides documentation including a letter from his mother stating in relevant part that "[d]ue to the Pandemic and my health concerns [redacted] has not been able to travel to see [redacted] and that [redacted] my husband...and myself have plans to meet [redacted] and her parents in [redacted], Mexico on 4/8/21."[3] He also provides a letter stating in part:

> US Government has [released] travel guidelines that I have been following. If USCIS disagrees with [their] own guidelines that must be handled internally. I reject the notion that is asserted in this letter that implies I should have disregarded guidelines released by the US government including those [released] by your own department. Further, I reject the notion that covid-19 and the [guidelines] the US government instituted are not an [undue] hardship on the US population.

It is the Petitioner's burden to establish that a waiver of the in-person meeting requirement is warranted as a matter of discretion. *See* 8 C.F.R. § 214.2(k)(2). The Petitioner has not met this burden. He does not specify or provide documentation of what travel options he and the Beneficiary considered, what travel restrictions existed during the relevant time, how these restrictions prevented him from

[2] We note that COVID-19 restrictions did not exist for most of the qualifying two-year period. The fiancée visa regulations give the parties two years to meet in person. 8 C.F.R. § 214.2(k)(2). The parties failed to do so here.
[3] This date falls outside of the qualifying two-year period.

complying with the in-person meeting requirement, or how compliance with the in-person meeting requirement would cause him extreme hardship. Similarly, while the Petitioner's mother states on appeal that her health concerns have prevented the Petitioner from travelling, the appeal does not contain any documentation regarding her health concerns or how they affected the Petitioner's ability to meet the Beneficiary in person. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369,376 (AAO 2010). He has not done so here.

The appeal includes documentation indicating that on January 1, 2022, one month after his petition was denied, the Petitioner bought airplane tickets and reserved a hotel room for an April 2022 trip to Mexico. While we acknowledge this evidence and the statement that the Petitioner and Beneficiary plan to meet, they do not satisfy the regulatory requirement that the parties in a fiancée visa petition meet in person in the two years preceding the filing of that petition. A petitioner must establish that they are eligible for the requested benefit at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).

Finally, the Petitioner states on appeal that he is entitled to approval of his petition under the due process clause of the U.S. Constitution and that denial of his appeal would be a violation of his civil rights. There are no due process rights implicated in the adjudication of a benefits application. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."). Since the Petitioner did not elaborate on this argument, we will not address it further.

The evidence of record does not demonstrate that compliance with the two-year in-person meeting requirement would result in extreme hardship to the Petitioner or violate strict and long-established customs of the Beneficiary's foreign culture or religious practice. We therefore conclude that the Petitioner has not established that he merits a favorable exercise of discretion to exempt him from the two-year in-person meeting requirement under section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). The denial of this petition shall be without prejudice to the filing of a new fiancée visa petition.

ORDER: The appeal is dismissed.