U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27162717

Date: AUG. 31, 2023

Appeal of California Service Center Decision

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

The Petitioner seeks to classify the Beneficiary as her K-1 nonimmigrant fiancé. Immigration and Nationality Act (the Act) section 101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i). For this classification, the Petitioner must establish that the couple met in person during the two-year period preceding the petition's filing, 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. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1).

The Director of the California Service Center denied the petition, concluding that the record did not establish that the Petitioner had disclosed her criminal history information as required by the International Marriage Broker Regulation Act of 2005 (IMBRA)[1] and section 214(d)(1) of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

IMBRA and section 214(d)(1) of the Act require fiancé visa petitioners to disclose whether they have been convicted of certain specified crimes.[2] If a petitioner has been convicted by a court or military tribunal of any of the specified crimes, they are required to submit certified copies of all court and police records showing the charges and dispositions for each of these convictions. *See generally* USCIS Policy Memorandum HQOPRD 70/6.2.11, *International Marriage Broker Regulation Act Implementation Guidance* 1-2 (Jul. 21, 2006). These records then become part of the I-129F, Petition for Alien Fiancé(e), record, and if the petition is approved, the Department of State will disclose the relevant criminal convictions to the Beneficiary during their consular interview. *Id*.

On her initial Form I-129F, the Petitioner did not answer Part 3, Question 4.a., which asks whether the Petitioner has ever been arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking

[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).

[2] These crimes are listed at section 214(d)(3)(B) of the Act.

or violating any law or ordinance in any country, apart from certain traffic violations or incidents disclosed elsewhere in the petition. The Director issued a request for evidence (RFE) requesting, among other things, an answer to this question, as well as certified copies of all relevant court and police records if the answer was "yes." In response, the Petitioner answered "yes" to Question 4.a., but only provided court records related to the Beneficiary's criminal history. Because the Petitioner had not provided the requested documents regarding her criminal history, the Director denied the petition.

On appeal, the Petitioner provides an attorney letter stating that the Petitioner misunderstood Question 4.a. and thought it pertained to the Beneficiary, which is why she answered "yes" and provided his criminal history documents. The letter also states that the Petitioner does not have a criminal history and so does not have to provide any court or police records. However, the unsubstantiated assertions of counsel do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1988) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Counsel's statements must therefore be substantiated in the record with independent evidence. The appeal does not include documentation to support counsel's statement, such as an affidavit from the Petitioner regarding her misunderstanding of Form I-129F or police clearance certificates establishing her lack of a criminal record. Further, on appeal, counsel asserts that the cover letter provided in response to the RFE "stated that [Petitioner] has no criminal history and it is her fiancé who has a record." However, a review of the record indicates that the RFE response letter does not say anything about the Petitioner's criminal record or lack thereof, and simply lists the Beneficiary's criminal history documents as one of the exhibits provided as evidence. Therefore, the Petitioner has not overcome the Director's ground of denial and the petition will remain denied.

Beyond the decision of the Director, the Petitioner has not submitted sufficient evidence to establish the Beneficiary's bona fide intention to marry her within 90 days of being admitted to the United States. Any foreign language document submitted to U.S. Citizenship and Immigration Services must be accompanied by a full English language translation, as well as a certification from the translator that the translation is complete and accurate and that they are competent to translate from the foreign language into English. 8 C.F.R. §103.2(b)(3). The letter from the Beneficiary regarding his intention to marry the Petitioner is written in a foreign language and accompanied by a translation that does not include the required certification. The same is true of two letters from the Beneficiary's family members attesting to the bona fides of the relationship. Because these translations were not accompanied by a certification that they are complete and accurate and that the translator is competent to translate from the foreign language into English, we cannot determine whether the translated material is accurate and thus supports the Petitioner's claims. As such, the record does not establish the Beneficiary's bona fide intention to marry the Petitioner.

The Petitioner has not established that she properly disclosed her criminal history information as required by IMBRA and section 214(d)(1) of the Act or that the Beneficiary has a bona fide intention to marry her within 90 days of admission to the United States. Therefore, she has not met the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant.

ORDER: The appeal is dismissed.