



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 27264429

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 his K-1 nonimmigrant fiancée. 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 in 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 his criminal history information as required by the International Marriage Broker Regulation Act of 2005 (IMBRA)<sup>1</sup> 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

The IMBRA criminal history reporting requirements are codified in Section 214(d)(1) of the Act, which states that a fiancée visa petition cannot be approved unless it includes "information on any criminal convictions of the petitioner for any specified crime . . . and information on any permanent protection or restraining order issued against the petitioner related to any specified crime."

Section 214(d)(3)(B)(i)-(iii) of the Act defines a "specified crime" as, among other things, domestic violence, child abuse and neglect, dating violence, or any attempt to commit such crimes, as well as at least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.<sup>2</sup> If a petitioner has been convicted by a court or military tribunal of any of the specified

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<sup>1</sup> 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).

<sup>2</sup> The full list of specified crimes at section 214(d)(3)(B) of the Act is:

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, as well as the relevant results of any criminal background checks conducted by U.S. Citizenship and Immigration Services, then become part of the Form 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.* In addition, any permanent restraining or protection order issued against the petitioner relating to a specified crime must also be disclosed to the beneficiary at this time. Section 214(d)(1) of the Act.

The sole issue on appeal is whether the Petitioner has met his IMBRA reporting requirements regarding his criminal record. In his initial I-129F petition, the Petitioner answered “No” to Part 3, Question 2.a., which asks if the petitioner has ever been arrested or convicted for any of the specified crimes listed at Section 214(d)(3)(B) of the Act. He also answered “No” to Part 3, Question 1, which asks if the petitioner has ever been subject to a protection or restraining order related to a specified crime.

Finally, the Petitioner answered “Yes” to Part 3, Question 4.a., which asks if the petitioner has ever been arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking or violating any law or ordinance apart from certain traffic violations. In Part 3, Question 4.b., he elaborated that he had been arrested for possession of crack cocaine. The Director sent a request for evidence (RFE) requesting, among other things, certified copies of all court and police records related to all of his criminal offenses. In response, the Petitioner provided an application he had submitted to the [redacted] Police Department [redacted] for a police clearance letter.<sup>3</sup> The Director denied the petition, finding that the Petitioner had not provided the requested information regarding his past arrest.

On appeal, the Petitioner submits various certified court records regarding his past arrests and a brief stating that his petition should be approved because he has put his criminal past behind him.<sup>4</sup> Upon review, while the Petitioner has overcome the Director’s sole denial ground, the petition cannot be approved.

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(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking, or an attempt to commit any such crime.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

<sup>3</sup> The application form states that if the applicant has a [redacted] arrest record, the clearance letter will be sent directly to USCIS. To date, we have not received such documentation from the [redacted]

<sup>4</sup> We note that the petition was not denied because of the existence of the Petitioner’s criminal record, but because of his failure to provide the documentation of that record as requested by the Director and required by Form I-129F. *Instructions for Form I-129F, Petition for Alien Fiancé(e)* at 6-7, <https://www.uscis.gov/sites/default/files/document/forms/i-129finstr.pdf> (detailing the disclosures and criminal history documentation required to accompany fiancée visa petitions); *see also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into regulations requiring that form’s submission), section 214(d)(1) of the Act (stating that fiancée visa petitions cannot be approved unless they include information required by regulation, including IMBRA criminal history disclosures),

The records the Petitioner submitted on appeal are for the following incidents:

- [ ] 2008: Charged with domestic battery under Cal. Penal Code §§ 242, 243(e) (2004). The case was ultimately dismissed.<sup>5</sup>
- [ ] 2014: Charged with: (1) The manufacture, sale, or possession of fewer than 1,000 counterfeit articles under Cal. Penal Code § 350(a)-(b) (2013) (second or subsequent violation); and (2) Possession of cocaine base for sale, a felony under Cal. Health & Safety Code § 11351.5 (2011). The Petitioner was convicted of both counts.

The appeal also includes a court document indicating that one of the Petitioner's criminal files was purged due to the age of the case or the nature of the charge(s), as well as a December 2020 document indicating that the Petitioner had his 2014 convictions expunged after fulfilling the terms of his parole.<sup>6</sup> By submitting certified court records regarding his arrest for possession of crack cocaine, the Petitioner has overcome the Director's sole ground of denial. However, Federal Bureau of Investigation fingerprint records for the Petitioner indicate the following additional criminal history:

- [ ] 2001 arrest in [ ] California for two counts of domestic violence. The Petitioner was ultimately charged in [ ] California with one count of intentional and knowing violation of a protective order under Cal. Penal Code § 273.6(a) (2001).<sup>7</sup> The case was dismissed.
- [ ] 2008 arrest in [ ] California for spousal battery. The Petitioner was ultimately charged in [ ] with domestic battery under Cal. Penal Code § 243(e) (2004). The case was dismissed.
- [ ] 2010 arrest and charge in [ ] California for the manufacture, sale, or possession of more than 1,000 counterfeit articles under Cal. Penal Code § 350(a)(2) (Jan. 2010). The Petitioner was convicted of this charge.

By falsely answering "no" to pertinent questions on his Form I-129F and only mentioning his arrest for cocaine possession prior to his appeal, the Petitioner failed to properly disclose his arrests for IMBRA specified crimes, as well as the fact that he had been subject to a domestic violence protection order. He also omitted three arrests and a possible additional protective order on appeal. Because this information is material to the Petitioner's eligibility and was not before the Director at the time of the decision, we will remand the matter for the Director to examine the new evidence in the first instance. The Director may request any additional evidence considered pertinent to the new determination, and we express no opinion regarding the ultimate resolution of this case on remand.

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

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<sup>5</sup> The court documents provided on appeal indicate that a domestic violence protection order was terminated when this case was dismissed. The Petitioner did not provide any other information about this protective order.

<sup>6</sup> A conviction which has been expunged under Cal. Penal Code § 1203.4, as in this case, generally remains a conviction for federal immigration purposes. *See, e.g., Ramirez-Castro v. INS*, 287 F.3d 1172, 1175 (9th Cir. 2002).

<sup>7</sup> The record does not contain any information about the protective order the Petitioner was arrested for violating.