U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25133832

Date: FEB. 2, 2023

Appeal of California Service Center Decision

Form I-129, 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 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 establish eligibility for the requested benefit. 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.

Section 214(d)(1) of the Act states that a petitioner must establish that the parties have previously met in person within two years before the date of filing the fiancé(e) petition, have an intention to enter into a bona fide marriage, and are legally able and actually willing to conclude a valid marriage in the United States within a period of 90 days after a beneficiary's arrival.

8 C.F.R. § 103.2(a)(1) provides that every form, benefit request, or other document must be submitted to DHS and executed in accordance with the form instructions and that the form instructions are incorporated into the regulations requiring its submission.

8 C.F.R. § 103.2(b)(2)(ii) provides that where a record does not exist, a petitioner must submit an original written statement on government letterhead establishing the nonexistence of the document from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available.

As an initial matter, we note that the Petitioner signed the Form I-129F, Petition for Alien Fiancé(e), under penalty of perjury, certifying "that all of this information is complete, true, and correct." However, the Petitioner did not answer Part 3, Questions 5a-5d, related to whether he is a multiple

filer and this question remains unanswered. Moreover, it appears the fiancée petition was prepared by the Beneficiary because of the response to Part 2 question 54 ("my fiancé visited me in the Philippines . . . I introduced him to my family, relatives, and friends."), however, the Beneficiary did not disclose in Part 7, that she prepared the form. Finally, the Form I-129F informs the Petitioner that "USCIS may deny [the] petition" for "fail[ure] to submit required documents listed in the instructions." We note that while a petitioner may, at times, correct deficiencies in the evidentiary record in order to establish eligibility for a benefit sought, the multiple omissions found in the Petitioner's initial filing indicate he may have been attempting to mislead our agency.

The Petitioner filed the petition on January 21, 2021. Because the Petitioner did not answer several questions on the petition related to his criminal history, the Director issued a request for evidence (RFE) requiring him to answer these questions, and to provide evidence of the facts, circumstances, and dispositions for any criminal offenses.

In response to the Director's RFE, the Petitioner answered the crimes-related questions on the fiancée petition and provided a statement explaining that he had been arrested twice in 1968, and that the records had been expunged and were unavailable due to the passage of time. The Petitioner also claims to have spoken to the government authority with jurisdiction over his criminal records, and was told that they were unavailable.

On appeal, the Petitioner provides an additional statement explaining that he was charged under two separate criminal statutes. One was for possession of 4 to 6 diet pills without prescription for which he received 5 years of probation. The other was for possession of several ounces of marijuana, for which he was also given 5 years of probation. He also notes that his criminal history was expunged and that he was granted "need-to-know" security clearance to work on defense projects with a company called [redacted]. He provides a copy of several documents related to his employment with [redacted] including the "W2 Hrly Agreement," "1099 Purchase Order Agreement," and "Initial Security Brief."

We recognize the Petitioner's assertion that documents related to events occurring several decades ago may be unavailable, however the burden remains with the Petitioner to establish his eligibility and suitability to petition for the Beneficiary. The Form I-129F's instructions provide that the Petitioner "must submit court certified copies of the arrest record and/or disposition for each incident unless you submit a certified statement from the court indicating that no record exists of your arrest, citation, charge, indictment, conviction, fine, or imprisonment." The submission of clearance documents related to his employment with [redacted] are insufficient because they do not address his arrest history or the unavailability of his criminal records, and the documents were not issued by the relevant government authority.

As such, because the Petitioner did not provide required documentation regarding his arrest history, and his petition contained several omissions of requested information, he has not established his burden by a preponderance of the evidence, and the petition remains denied. *See Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

ORDER: The appeal is dismissed.