



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

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

In Re: 24745061

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 petition, concluding that the record did not establish that the parties personally met within the two-year period immediately preceding the filing of the petition or that the Petitioner merits a discretionary waiver of the personal meeting requirement. 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.

I. LAW

Section 214(d)(1) of the Act states that a fiancé(e) petition can be approved only if a petitioner establishes that the parties have previously met in person within two years before the date of filing the fiancé(e) 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 a period of 90 days after a beneficiary's arrival. As a matter of discretion, the Director may exempt a petitioner from this requirement only if it is established that compliance would: 1) result in extreme hardship to the petitioner; or 2) violate strict and long-established customs of a beneficiary's foreign culture or social practice. Failure to establish that a petitioner and beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. 8 C.F.R. § 214.2(k)(2). An applicant or petitioner must establish that she or he is eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1).

II. ANALYSIS

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.” In addition, every petition must be executed in accordance with the instructions on the form, which are incorporated into the regulation requiring its submission. 8 C.F.R. § 103.2(a)(1). Further discussion of the filing requirements for applications and petitions is found at 8 C.F.R. § 103.2(b)(1): “. . . . Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request.” Finally, the Form I-129F also informs the Petitioner that “USCIS may deny [the] petition” for “fail[ure] to submit required documents listed in the instructions.”

Because the Petitioner filed the fiancé(e) petition on January 19, 2021, he must establish he and the Beneficiary met in-person between January 19, 2019, and January 18, 2021. The Petitioner provided the following information on the Form I-129F:

Part 2:

Item 53: Have you and your fiancé(e) met in person during the two years immediately before filing this petition? Yes

If you answered "Yes" to Item Number 53., describe the circumstances of your in-person meeting in Item Number 54. Attach evidence to demonstrate that you were in each other's physical presence during the required two year period. If you answered "No," explain your reasons for requesting an exemption from the in person meeting requirement in Item Number 54. and provide evidence that you should be exempt from this requirement. Refer to Part 2., Item Numbers 53. - 54. of the Specific Instructions section of the Instructions for additional information about the requirement to meet.

Item 54: We met in Australia in person after speaking with one another on [redacted] for about 1 year. [The Beneficiary's] sister got married and lives in Australia, [redacted] her name is []. We stayed together in a hotel for about 7 days. (As evidence, he included four undated photographs of him and the Beneficiary.)

Part 3:

Item 1: Have you EVER been subject to a temporary or permanent protection or restraining order (either civil or criminal)? No

Have you EVER been arrested or convicted of any of the following crimes:

Part 2a: Domestic violence, sexual assault, child abuse, child neglect, dating violence, elder abuse, stalking or an attempt to commit any of these crimes? (See Part 3. Other Information,

Item Numbers 1. - 3.c. of the Instructions for the full definition of the term "domestic violence.") No

NOTE: If you were ever arrested or convicted of any of the specified crimes, you must submit certified copies of all court and police records showing the charges and disposition for every arrest or conviction. You must do so even if your records were sealed, expunged, or otherwise cleared, and regardless of whether anyone, including a judge, law enforcement officer, or attorney, informed you that you no longer have a criminal record.

Item 5: Indicate which one of the following waivers you are requesting:

- a. Multiple Filer, No Permanent Restraining Orders or Convictions for a Specified Offense (General Waiver)
- B. Multiple Filer, Prior Permanent Restraining Orders or Criminal Conviction for Specified Offense (Extraordinary Circumstances Waiver)
- C. Multiple Filer, Prior Permanent Restraining Order or Criminal Convictions for Specified Offense Resulting from Domestic Violence (Mandatory Waiver)
- D. Not applicable, beneficiary is my spouse or I am not a multiple filer

The Petitioner selected option D.

The Director issued a request for evidence (RFE) explaining, among other things, that there was insufficient evidence to establish the two-year meeting requirement and to provide him an opportunity to submit relevant evidence. The Director noted that it appeared the Petitioner had been arrested, and requested he submit certified court and police records showing the charges and dispositions for every arrest. The Director also explained that because the Petitioner had previously filed two or more fiancée petitions, he was subject to the International Marriage Broker Regulation Act (IMBRA), which required him to submit a waiver request along with an explanation of why a waiver would be appropriate in his circumstances. The IMBRA was created to prevent violence against alien spouses, fiancé(e)s and their children by informing them of a petitioner's criminal convictions for specified offenses and/or any protection or restraining orders before they enter the United States.¹ In addition, any permanent protection or restraining order issued against the petitioner related to any IMBRA-specified crime must be disclosed to the Beneficiary.

In his RFE response, the Petitioner requested an extreme hardship waiver of the two-year in person meeting requirement. He explained that he personally met the Beneficiary in Australia in June 2018 (prior to the relevant two-year period), and that he could not comply with the in-person meeting requirement because he moved to a different state in September 2019 and had difficulty finding employment due to COVID-19-related hiring freezes. He also asserted that the Beneficiary could not

¹ See Title VII, Subtitle D of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 199 Stat. 2960 (2006), 8 U.S.C. § 1375a. As such, the IMBRA requires a petitioner to submit information on any criminal convictions for "specified crimes." The IMBRA's specified crimes include: (1) domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking, or an attempt to commit any such crime; (2) 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; and (3) at least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act. See section 214(d)(3) of the Act.

travel due to COVID-19 and that she took extra precautions during the pandemic due to her concerns over her elderly parents' health. His response did not explain why he incorrectly indicated that he and the Beneficiary had "met in person during the two years immediately before filing this petition" and provided photographic evidence.

In addition, although he provided records of criminal court dispositions and a letter purportedly from his former wife, he did not submit police records, which the Director specifically requested and is required documentation. "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

The Director denied the petition finding the evidence insufficient to establish that an in-person meeting had taken place during the relevant two-year period immediately preceding the filing of the petition or that the Petitioner had established that he merited an extreme hardship discretionary exemption. In particular, the Director acknowledged the Petitioner's personal circumstances, but found a lack of corroborating evidence to show that the difficulties the Petitioner experienced in finding a job were related to COVID-19 or a hiring freeze. In addition, the Director explained that financial difficulties are insufficient to constitute extreme hardship because travel costs are an "ordinary burden" placed on all individuals who travel abroad. The Director further noted that the relevant two-year period began in January 2019 and the COVID-19 pandemic did not begin until March 2020. The Petitioner's evidence did not establish why he was unable to meet the Beneficiary in the period between January 2019 and the beginning of the pandemic. The Director also observed inconsistencies regarding the Petitioner's statements about his financial concerns with traveling to see the Beneficiary, because the Petitioner indicated that he had purchased a home and sent the Beneficiary money during this period of time. Finally, the Director noted that the Petitioner's arguments related to the risks associated with international travel during COVID-19 were risks that all individuals faced and did not represent an extreme hardship.

On appeal, the Petitioner states that, although he did not meet the Beneficiary during the required two-year period, he travelled to India from January 21, 2022 to February 6, 2022 to visit her. He asserts that the Director's decision was "false, inaccurate, and had many misleading statements" and that travel during the COVID-19 pandemic would have endangered his life and the life of his teenage son. He explains that he could not travel to visit the Beneficiary because he is a single father and his son, a teenager, could not be left alone. He also discusses his difficulty finding employment and stable housing after moving to North Carolina. He indicates that he was able to travel to India more recently because his son is now 17 years old, and can be left alone. He asserts that the potential loss of a home and all his assets is extreme hardship. He alleges that the Director does not care about him or his son's health by suggesting that he could have traveled during the COVID-19 pandemic, which shut down worldwide travel, and caused significant loss of life. He asserts that during the period from January 2019 to March 2020, he could not travel because he is a single father and had to work. Also, because he did not know that the pandemic was coming, he could not have done things differently. The Petitioner recounts how the U.S. and Indian governments have responded to the COVID-19 pandemic. He claims that before January 2022 (when he went to India), he was too scared to fly during the COVID-19 pandemic because of the high risk of spread among airline travelers.

The Petitioner's appeal statement remains insufficient to establish that traveling during the two year period prior to the filing of the petition would have caused him extreme hardship. His arguments are contradictory and confusing. For instance, he claims he is a single father that cannot leave his son

alone, yet our records indicate he has traveled to several countries in the past including Jamaica, Australia, and Hong Kong.² Further, we note that he did not make any arguments related to being a single father until this appeal and has not provided corroboration to support these statements.³ The evidence does not demonstrate, for example, how he was able to travel to various countries as a single father with a young child, but could not travel between the period between January 2019 and January 2021.

The Petitioner also claims that traveling would have led to him losing his assets, and potentially his home. He does not, however, sufficiently establish how, as the Director pointed out, he was able to send significant sums of money to the Beneficiary during this same period of time he claimed to be job hunting and facing financial difficulties.⁴

As to the Petitioner's claims that the Director did not consider his health if he were to travel during COVID-19, or if he were to die from COVID-19 and his son were to lose his father, there is no basis for asserting this claim. The Director's decision rested on the lack of probative evidence to establish why the Petitioner did not travel during the period prior to the beginning of the pandemic, from January 2019 to March 2020. Furthermore, the Director explained that the travel related disruptions and difficulty with international travel during COVID-19 were issues affecting all individuals. No fair reading of the Director's decision would suggest the Director did not care about his health or his son losing his only parent.⁵

We also note that the Petitioner appears subject to the IMBRA filing limitations and has not provided sufficient documentation to support granting him a waiver. For example, while the Petitioner's October 22, 2021, statement notes that his prior fiancée petition, which he filed on behalf of a Ukrainian national, was cancelled, our records do not substantiate its cancellation. Furthermore, he states that he has "no criminal history with regard to the 'specified crimes' under the IMBRA." However, our records indicate that the Petitioner had a restraining order against him requiring him "to stay away from the residence, property, school, or place of employment of [his former wife] or [her family or household member(s)]" and restraining him from "making any communication with [his former wife] or [her family or household member(s)]" In addition, as a condition of the restraining order against him, the state of Florida prohibited him from purchasing or possessing a firearm. The Petitioner's former wife's letter indicated that he had "never hit [her] and there is no domestic violence," but this letter is not notarized, and the signature does not appear to be an original. Therefore, the evidence remains insufficient to establish the true facts of the Petitioner's restraining order and prohibition against his possession and purchase of a firearm, and/or whether he and his former wife had a domestic dispute, and what transpired during the dispute.

² Adjudicators have the discretion to validate assertions or corroborate evidence and information by consulting USCIS or other governmental files, systems, and databases, or by obtaining publicly available information. *See* 8 U.S.C. § 1357(b).

³ For example, the Petitioner has not provided a copy of any custody agreement. Nor has he established that he is unable to leave his son in the care of others.

⁴ The Petitioner states that he is supporting the Beneficiary and her family because he advised her not to take the COVID-19 vaccine and she lost her job in India.

⁵ The record does not establish that the Petitioner is, in fact, a single father as he describes himself in his appeal letter, writing "I am a single father with no extended family and could not leave my son home alone at age 15 in 2019 and in the 10th grade."

As discussed above, the Petitioner failed to disclose his history of arrests (and provide the required and requested police records) and that he 1) has been subject to a restraining order, 2) previously filed two fiancée petitions and needed to request a waiver of the IMBRA filing limitations, and 3) did not meet the Beneficiary in-person during the relevant and required two-year period. While a petitioner may correct deficiencies in the evidentiary record in order to establish eligibility for a benefit sought, the multiple misleading and incorrect statements found in the Petitioner's initial filing appears to be an attempt to mislead the Director in order to gain an immigration benefit for the Beneficiary. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring resolution of inconsistencies in the record with independent, objective evidence pointing to where the truth lies).

III. CONCLUSION

For the reasons above, the Petitioner has not satisfied the statutory and regulatory requirement of meeting within the two-year period prior to filing the petition, or that meeting this requirement would have caused him extreme hardship. Therefore, the petition remains denied.

ORDER: The appeal is dismissed.