U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25120942

Date: FEB. 7, 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 Director of the California Service Center denied the petition, concluding that the Petitioner did not submit sufficient evidence demonstrating 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.

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.

The regulations require a petitioner to establish to the satisfaction of the Director that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the Director may exempt a petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would 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).

Because the Petitioner filed the fiancée petition on January 28, 2021, he must establish he and the Beneficiary met in person between January 28, 2019, and January 27, 2021. On the Form I-129F, the Petitioner acknowledged they had not met in person during the required timeframe. According to his statement, they became acquainted on February 11, 2020 and have maintained their relationship through daily conversations using a social media app. The Petitioner asserted that the COVID-19 pandemic made it difficult for them to travel and meet each other in person and that due to his medical concerns, he took extra precautions regarding travel. He further explained that they made travel plans on two separate occasions to meet in person in late 2020, but that their plans were cancelled because of COVID-19 travel restrictions.

In response to the Director's request for evidence, the Petitioner explained he was diagnosed with prostate cancer in early 2019 and that his medical condition and treatment made it impossible for him to travel. The Petitioner also provided copies of identification documents, Veterans Affairs' (VA) disability documentation, a doctor's letter confirming that the Petitioner attended office visits followed by prostate cancer treatments and treatment follow-ups from April 2019 to June 2020 and that he was unable to travel during that period of time, and medical documents to confirm his cancer treatment.

The Director denied the petition concluding the evidence was insufficient to establish the Petitioner merited an extreme hardship discretionary exemption. The Director explained that his doctor's letter indicated that the Petitioner could not travel on the dates of his treatment, but not before or after his treatment, and that the VA documentation did not address the Petitioner's ability to travel. The Director also noted the inconsistency between the Petitioner's claims of extreme hardship if he were to travel as a result of his health issues and treatment, and his scheduled 2020 travel plans (which were cancelled due to COVID-19). Lastly, the Director denied the Petitioner's exemption request based on COVID-19 travel restrictions, noting that the travel disruptions were temporary in nature and, by themselves, did not constitute extreme hardship within the meaning of 8 C.F.R. § 214.2(k)(2).

A review of the record reflects that the Director sufficiently evaluated the evidence, and we agree with the Director's conclusions. Therefore, we adopt and affirm the Director's decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Petitioner provides evidence that he traveled to Malaysia and met the Beneficiary in person from October 14 to November 2, 2022.[1] We acknowledge that this evidence establishes that he met the Beneficiary, however this meeting did not occur during the two-year period immediately preceding the filing of the petition, as required. Further, the evidence provides no additional explanation as to why travel during the required two-year period would have caused him extreme hardship. As the Petitioner has not demonstrated that he merits an extreme hardship exemption, the petition remains denied.

While not a basis for our decision, we also note the following concerns which should be addressed in any future application or petition filed by the Petitioner on the Beneficiary's behalf for a U.S. immigration benefit. First, based upon submitted receipts and the Petitioner's own statement, we are

[1] Although Petitioner's counsel provided a brief, it makes only general assertions that the Director's decision was in error.

left to question whether the Petitioner and the Beneficiary were engaged at the time of filing the instant petition. Second, documents submitted with this petition indicate that the Beneficiary and her husband [redacted] divorced on [redacted] 2016. However, U.S. government records indicate that on July 11, 2022, the Beneficiary applied for a tourist visa at a U.S. Consulate in [redacted] China and indicated that she was married and living with her husband, [redacted] As a result, the Petitioner and Beneficiary's intent to enter into a bona fide marriage and their ability to legally marry have not been established. This discrepancy in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

ORDER: The appeal is dismissed.