U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25551534

Date: MAR. 24, 2023

Appeal of California Service Center Decision

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

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary as his fiancée. Immigration and Nationality Act (the Act) section 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). A U.S. citizen may petition to bring a fiancée (and that person's children) to the United States in K nonimmigrant visa status for marriage. The U.S. citizen must establish that the parties have previously met in person within two years before the date of filing the 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 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 parties had met in person in the two years prior to the petition's filing or that the Petitioner should be granted an exemption from this requirement in the exercise of discretion. 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.

In order to classify a beneficiary as their fiancée, a petitioner must establish, among other things, that both parties have met in person in the two years preceding the date of filing the petition. Section 214(d)(1) of the Act.

As a matter of discretion, U.S. Citizenship and Immigration Services may exempt a petitioner from this requirement only if the petitioner establishes that compliance would result in extreme hardship to the petitioner or if compliance would violate strict and long-established customs of a beneficiary's foreign culture or social practice. Failure to establish that the parties have met in person within the required period or that the requirement should be waived shall result in denial of the petition. 8 C.F.R. § 214.2(k)(2).

Since the Petitioner does not claim that he and the Beneficiary met in person in the two years preceding the filing of the petition, the sole issue on appeal is whether he should be exempted from this requirement as a matter of discretion.

The Petitioner filed Form I-129F, Petition for Alien Fiancé(e), on May 3, 2021. Therefore, he was required to meet with the Beneficiary in person between May 2, 2019, and May 2, 2021. The Petitioner claimed that meeting the Beneficiary in person would cause him extreme hardship due to the COVID-19 pandemic and the nature of his work duties for a government agency. To support his claim, he provided an employment verification letter. The Director denied the petition, concluding that the two-year meeting period began prior to the pandemic and that the evidence provided did not establish that travelling to meet the Beneficiary would cause him extreme hardship.

On appeal, the Petitioner resubmits his employment verification letter and emphasizes the importance of his work duties, which require him to run weekly reports. He states that due to the importance of his work, he was unable to telecommute during the pandemic, and that no one else can perform his duties. First, as noted by the Director, a significant part of the relevant two-year period occurred prior to the COVID-19 pandemic. Second, the employment verification letter does not mention any restrictions on the Petitioner's ability to take leave, travel, or telecommute. There is no other documentation in the record regarding the leave or travel policies of the Petitioner's employer. The Petitioner must support his assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). He has not done so here. The documentation provided does not establish that the Petitioner's job prevented him from travelling to meet the Beneficiary in Ghana within the required two-year period.

It is further noted that the Petitioner does not discuss whether he considered other methods of meeting the Beneficiary in person, such as meeting in a third country that is closer to the United States and would require less travel or having the Beneficiary travel to the United States. The totality of the evidence provided does not demonstrate that complying with the in-person meeting requirement would cause the Petitioner extreme hardship or violate strict and long-established customs of the Beneficiary's foreign culture or religious practice. We conclude that the Petitioner has not established that he should receive an exemption from the in-person meeting requirement in the exercise of discretion. Therefore, he has not met the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant. The appeal will be dismissed.

We note that the evidence on appeal includes sworn declarations that the Petitioner and Beneficiary were married by proxy in Ghana in [redacted] 2019. The Petitioner was not physically present in Ghana during the marriage ceremony. As noted above, the fiancée visa classification requires the parties to be legally able to conclude a marriage in the United States. Section 214(d)(1) of the Act. In general, the legal validity of a marriage is determined by the law of the place where the marriage was celebrated. Marriages by proxy (where one party is not present during the marriage ceremony) are permissible under Ghanaian customary marriage laws.[1] However, USCIS does not recognize a proxy marriage as a valid marriage unless the marriage has been consummated. *See generally* 12 USCIS Policy Manual G.2(A)(1), https://www.uscis.gov/policy-manual. If the proxy marriage is recognized

[1] *See* U.S. Dep't of State, *Ghana*, https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Ghana.html (click to expand the section on "Marriage, Divorce Certificates").

as a valid marriage in these proceedings, the Beneficiary is not the Petitioner's fiancée under section 101(a)(15)(K) of the Act and she is ineligible for the K-1 visa. Because the Petitioner was not previously put on notice of this issue, it is not part of the basis for this dismissal. However, it should be addressed in any future proceedings.

ORDER: The appeal is dismissed.