U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28127045

Date: SEP. 05, 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 during 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 qualifies for a waiver from the International Marriage Broker Regulation Act of 2005 (IMBRA) regulations regarding multiple filings of fiancée petitions[1] or for a waiver of the two-year meeting 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.

I. LAW

In order to classify a beneficiary as their fiancée, a petitioner must establish, among other things, that both parties 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 (USCIS) may exempt a petitioner from the in-person meeting requirement only if the petitioner establishes 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 the parties have

[1] 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).

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).

To help ensure that fiancée visas are reserved for bona fide relationships, the Act does not allow the approval of a petition if the petitioner has previously filed fiancée petitions for at least two different beneficiaries. Section 214(d)(2)(A)(ii) of the Act, 8 U.S.C. § 1184(d)(2)(A)(ii). USCIS may provide a discretionary waiver of this limitation if justification exists. Section 214(d)(2)(B) of the Act.

II. ANALYSIS

The first issue on appeal is whether the Petitioner should receive a waiver of the IMBRA filing limitations in the exercise of discretion. USCIS guidance states that petitioners may request an IMBRA waiver in a letter explaining why such a waiver would be appropriate given their circumstances. USCIS may then approve the request as a matter of discretion if justification exists. *See generally* USCIS Policy Memorandum HQOPRD 70/6.2.11, *International Marriage Broker Regulation Act Implementation Guidance* 1 (Jul. 21, 2006). Factors to be considered in deciding whether to grant a waiver include, but are not limited to, the petitioner's past filing patterns and whether they exceeded the filing limitations due to unusual circumstances, such as a beneficiary's inability to attend their scheduled consular interview. *Id.*

In his initial Form I-129, Petition for Alien Fiancé(e), the Petitioner answered "yes" to Part 1, Question 43, which asked if he had ever filed a Form I-129F on behalf of any other beneficiary, and indicated in Part 1, Question 47 that the petition had been approved. However, he did not provide any information for Part 1, Questions 44 to 46, which request information about each previous I-129F filing and beneficiary.

USCIS systems indicate that the Petitioner previously filed I-129F petitions in 1994, 2011, and 2016 on behalf of three different beneficiaries, all of which were approved. The IMBRA filing limitations codified at Section 214(d)(2)(A)-(B) of the Act state that I-129F petitions may not be approved if filed by a petitioner who has previously filed such petitions on behalf of at least two different beneficiaries. As such, the Petitioner is subject to the filing limitations. The Director therefore issued a request for evidence (RFE) requesting, among other things, information establishing why the Petitioner should receive a waiver of the IMBRA filing limitations.

In response, the Petitioner provided a statement indicating that he is requesting a waiver from the filing limitations because "[t]here was only one fiancée visa that was approved, which resulted in a 12-year marriage." (emphasis removed). The Director denied the petition, noting that contrary to this statement, all three of the Petitioner's fiancée visa petitions had been approved. Furthermore, two of the approved petitions did not result in a marriage, and the waiver request did not provide any explanation as to why. Therefore, the Director found that there was insufficient justification for a favorable exercise of discretion and denied the waiver request.

On appeal, the Petitioner provides a statement which asserts that the denial is incorrectly based on a typographical error he made on a different part of his Form I-129F.[2,3] He further states that the reason he did not initially request a waiver of the filing limitations is because he misunderstood the IMBRA rule and thought that it only applied to petitioners who had multiple fiancée visa petitions approved, rather than those who had simply filed multiple petitions.[4] Finally, he notes that he submitted a waiver request in response to the Director's RFE, "which this denial did not consider."

A review of the record indicates that the IMBRA waiver was not denied because the Petitioner failed to request it in his initial filing, but because he did not provide sufficient justification for such a waiver in response to the Director's RFE. We further note that the Petitioner, contrary to his claims in the RFE response and on appeal, does have multiple approved fiancée visa petitions. As stated by the Director in the RFE and denial, all three of the Petitioner's prior fiancée visa petitions were approved. The Petitioner has not addressed the inconsistencies between his filing history as stated in USCIS records and his statements regarding that history. *Matter of Ho*, 19 I&N Dec. at 591-92. Furthermore, the Petitioner has not explained why only one of his three approved petitions resulted in a marriage. We therefore cannot find that his filing history is due to unusual circumstances or that some other justification exists for a waiver of the IMBRA filing limitations. *Id.*

The Petitioner has not established that he should receive a waiver of the IMBRA filing limitations in the exercise of discretion. Because this issue is dispositive of the appeal, we need not reach the issue of whether he merits a waiver of the two-year meeting requirement and hereby reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision; *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof). The Petitioner has not met the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant.

ORDER: The appeal is dismissed.

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[2] In Part 1, Question 23 of his Form I-129F, the Petitioner gave his marital status as "divorced." However, he answered "No" to Part 1, Question 37, which asked if he had ever been previously married. Where there are material inconsistencies in the evidence, it is the Petitioner's burden to resolve these inconsistencies using independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Director therefore requested evidence that all of the Petitioner's prior marriages had been terminated, which the Petitioner then provided. The petition was not denied on this basis.

[3] Beyond the decision of the Director, we note that the Petitioner never provided a list of all of his prior I-129F filings, their beneficiaries, when he filed them, and what action USCIS took on them; a list of all of his prior spouses and when each marriage was terminated; or, having answered "yes" to the question about having children under 18, a list of those children's ages. All of this information is required by the form instructions. Instructions for Petition for Alien Fiancé(e) at 3-5, https://www.uscis.gov/sites/default/files/document/forms/i-129finstr.pdf; *see also* 8 C.F.R. § 103.2(a)(1) (incorporating form instructions into the regulations requiring that form's submission).

[4] IMBRA requires waivers under two circumstances: 1. If the petition was filed less than two years after the approval of a prior I-129F filing by the same petitioner; and 2. If the petitioner previously filed I-129F petitions on behalf of at least two different beneficiaries, regardless of the outcome of those prior filings. Section 214(d)(2)(A) of the Act.