U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28357983

Date: SEP. 22, 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 and Beneficiary had met in person in the two years preceding the filing of the petition or that the Petitioner should receive a waiver of 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 this 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 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).

The Director concluded that the Petitioner did not submit sufficient evidence to establish that complying with the two-year meeting requirement would have caused him extreme hardship. On appeal, the Petitioner provides several items of new evidence, including a personal statement, leave documents from his workplace relating to being at high risk from COVID-19 and caring for his ill

father, information on Vietnamese travel restrictions during the COVID-19 epidemic, and a case history indicating the divorce-related hearings the Petitioner had to attend throughout the two-year period. These submissions are material to the Petitioner's claim. Therefore, we will remand the matter to the Director to consider this new evidence in the first instance and determine whether the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant have been met.

Furthermore, beyond the decision of the Director, the record indicates that the Petitioner may have failed to disclose his criminal history information as required by the International Marriage Broker Regulation Act of 2005 (IMBRA)[1] and section 214(d)(1) of the Act. On his Form I-129F, Petition for Alien Fiancé(e), the Petitioner answered "No" to Part 3, Question 1, which asks if the petitioner has ever been subject to a protection or restraining order related to a specified crime.[2] However, the Petitioner's 2021 divorce decree states that child custody was awarded to his ex-wife as originally ordered by a 2015 DVRO, or domestic violence protection order. This indicates that the Petitioner has been subject to a protection order in the past. If this order was related to a specified crime, he must provide certified copies of all court and police records showing the relevant charges and dispositions.[3] As this information was not addressed by the Petitioner or the Director, we will remand the matter for this additional reason.

The Director may request any other evidence considered pertinent to the new decision and any other issues. We express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[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).

[2] The full list of specified crimes is found at section 214(d)(3)(B) of the Act and includes domestic violence, child abuse and neglect, and attempts to commit such crimes.

[3] *Instructions for Form I-129F, Petition for Alien Fiancé(e)* at 6-7, 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 regulations requiring that form's submission), section 214(d)(1) of the Act (stating that fiancée visa petitions cannot be approved unless they include information required by regulation, including IMBRA criminal history disclosures).