



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

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

In Re: 28628536

Date: SEP. 25, 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 enter into 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 was eligible for the benefit sought at the time of filing. 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.

Pursuant to 8 C.F.R. section 103.2(b)(1) a petitioner must establish that he is eligible for the requested benefit at the time of filing the petition. The Form I-129F, Petition for Alien Fiancé(e), instructions require petitioners to file evidence of the termination of all prior marriages for both parties to establish a legal ability to enter into a valid marry. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1).

The Petitioner filed the petition on behalf of the Beneficiary on September 27, 2021. While it was pending, he filed a spousal petition for a different beneficiary with a marriage certificate showing that they married on [REDACTED] 2022. Thus, on January 12, 2023, the Director denied the fiancée petition because the Petitioner's subsequent marriage to another meant that the Beneficiary could not be classified as a fiancée under section 101(a)(15)(K) of the Act.

On appeal, the Petitioner argues that the Director erred in denying the petition because, at the time of filing, he was single. He states that he provided evidence of the termination of his prior two marriages and that only after filing the fiancée petition did he marry, and then divorce, the beneficiary of the spousal petition.

Instead of providing a final divorce judgement he submits a letter explaining that the marriage did not work out because his spouse did not want to leave Ukraine due to the war and that the couple separated on [REDACTED] 2022. He also provides a document showing that he filed for divorce in [REDACTED] California on [REDACTED], 2023. This evidence is insufficient, however, to establish he is legally able to enter into a valid marriage to the Beneficiary because it is not proof of divorce. As such, the Director did not err, and we must dismiss the appeal.

We further note that the Petitioner also appears to have failed to file evidence with this fiancée petition that his prior marriage to [REDACTED] ended in divorce. Although he wrote on his fiancée petition that he “DID NOT MARRY” her, this answer contradicts evidence submitted with his spousal petition which shows he married and then divorced this individual on [REDACTED] 2019 and [REDACTED] 2021 respectively.

The Petitioner’s signature on the fiancée petition was signed under penalty of perjury under 28 U.S.C. section 1746. His signature affirmed that all information and documentation submitted with the petition was complete, true, and correct. His signature also authorized the release of any information from his records that USCIS “may need to determine eligibility for the immigration benefit . . . and consent to USCIS verifying such information.” See page 13 of Form I-129F instructions (edition 03/21/2022). Therefore, the Petitioner should ensure that all future petitions fully and completely disclose all relevant and material facts and include the supporting documentation required by the form’s instructions and the requested classification. Discrepancies in a 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).

The Petitioner has not established that he has met the regulatory and statutory requirements for approval of the fiancée petition. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.