U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28918559

Date: MAR. 20, 2024

Appeal of California Service Center Decision

Form I-129F, 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 record did not establish that the parties were free to marry at the time the petition was filed. The matter is now before us on appeal pursuant to 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 eligibility at the time of filing the petition, and any evidence submitted in connection with a benefit request is incorporated into and considered part of the request. 8 C.F.R. § 103.2(b)(1). Moreover, a petitioner must provide all documents that are required to support a benefit request in accordance with the form's instructions. 8 C.F.R. § 103.2(b)(4). The form's instructions are incorporated into the regulations requiring its submission, and each form, benefit request, or other document must be filed with the fee(s) required by regulation. 8 C.F.R. § 103.2(a)(1).

The Petitioner filed this fiancée petition on January 20, 2021, and provided evidence to show he divorced his prior two spouses. Specifically, he provided a death certificate for his first spouse, showing that on the date she died [redacted] 2016), she was divorced. He also provided a few pages (1, 2, and 19) from a court order, which he claims relates to his second spouse to prove their divorce on [redacted] 2019. During these proceedings, the Petitioner provided a copy of a letter he wrote, dated

March 9, 2020, addressed to the Consulate General of Mexico in Hong Kong stating, "please be advised that [redacted] in the United States is considered my common law wife due to our cohabitation laws." Elsewhere in the record, the Petitioner provided a copy of the Beneficiary's license issued by the state of Texas on July 18, 2017, with a home address in Texas, and a copy of the Beneficiary's passport issued by the Chinese government on November 20, 2014, in the name [redacted] The Director noted that in response to the request for additional evidence (RFE), the Petitioner did not include any information to clarify the status of his common law marriage to the Beneficiary or sufficient evidence to show that the parties were free to marry at the time the petition was filed. The Director also considered other information in the record indicating the parties had entered into a common law marriage such as: the Petitioner's letter stating he had lived with the Beneficiary in Texas; the Petitioner's statements that he is living with the Beneficiary in Mexico; lease agreements for their Mexican property, signed by both parties with the same last name; the Beneficiary's change of last name to the Petitioner's surname; the Beneficiary's use of the Petitioner's surname in official documentation, such as her passport; the parties' joint bank account; the Petitioner's financial documents (Revocable Assignments) showing his intent to provide for the Beneficiary if he predeceases her; and the fact that the Petitioner's state of residence (Texas) recognizes common law marriages. Citing to *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988), the Director determined the inconsistencies in the record cast doubt on the reliability and sufficiency of the evidence and the Petitioner's credibility. As a result, the Director denied the petition, concluding the Petitioner did not establish, by a preponderance of the evidence, he was free to marry the Beneficiary when the petition was filed.

On appeal, the Petitioner claims he could not marry the Beneficiary until after his divorce from his second spouse was finalized on [redacted] 2019. He further claims that Texas Family Code section 2.401(a)(2) requires three conditions for a common law marriage to be recognized, one of which is cohabitation, and the parties could not fulfill this requirement because the Beneficiary was ordered removed from the United States on [redacted] 2018, and has not been able to reside here since that date.[1] Therefore, he asserts that because he was not free to marry until after [redacted] 2019, and the Beneficiary has not been able to reside in Texas since her removal on [redacted] 2018, they are not married under Texas' common law statute. He also asserts that he "mistakenly" told the Consulate General of Mexico that he is common law married to the Beneficiary, and that "in the course of filing for a new passport, I suggested to [the Beneficiary] that she get the passport with my last name" and "[s]he went through the process of obtaining a name change in Hong Kong, that was not based on marriage to me."

The Petitioner's evidence remains insufficient to establish the parties were free to marry for several reasons. First, he claims he divorced his second spouse on [redacted], 2019, however he does not provide a full and complete copy of his divorce decree. Thus, we are unable to determine that the divorce order relates to him and his second spouse. *See Matter of Chawathe*, 25 I&N Dec. at 375-76; *and see* 8 C.F.R. § 103.2(b)(4). Second, he claims the Beneficiary underwent a legal name change in Hong Kong that was not based on marriage to him. In support, he provides a "Deed" signed by the

[1] The Beneficiary's removal order included a five-year ban from reentering the United States. Notwithstanding this ban, on September 10, 2019, she attempted to reenter the United States using a British passport, issued with her new name [redacted], on the visa waiver program. She was apprehended by border officials, and claimed a fear of return, however she later withdrew that claim. She was removed again from the United States and may be permanently barred from entering the United States under section 212(a)(9)(C)(ii) of the Act.

Beneficiary on May 23, 2019, in Hong Kong, stating that she renounces and abandons the use of her former name and will be known as [redacted] Although the document has the signature of a solicitor, there is no indication that her name change was not based on a common law marriage to the Petitioner, or indicate what name change procedures were followed. Thus, the document is insufficient to establish that the Beneficiary's name change was not on account of her marriage to the Petitioner. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. Because the Petitioner has not established, by a preponderance of the evidence, that the parties were free to marry each other when the petition was filed, the appeal will be dismissed.

ORDER: The appeal is dismissed.