U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30390248

Date: MAY 3, 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 "K-1" visa classification). A U.S. citizen may petition to bring a fiancé(e) to the United States in K-1 status for marriage.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not submit sufficient evidence demonstrating that the parties personally met within the two-year period immediately preceding the filing of the petition or that the Petitioner merits an extreme hardship discretionary waiver of this requirement. 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.

I. LAW

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 to the satisfaction of the Director that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the Director may exempt a petitioner from this requirement only if it is established 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 a petitioner and beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. 8 C.F.R.

§ 214.2(k)(2). An applicant or petitioner must establish that they are eligible for the requested benefit at the time of filing the application or petition. 8 C.F.R. § 103.2(b)(1).

II. ANALYSIS

Upon review of the record in its totality, we conclude that the Petitioner has not established that he merits a discretionary waiver of the two-year personal meeting requirement for the following reasons.

The Petitioner filed the fiancé(e) petition on March 24, 2022, thus the relevant time period in which he must show he and the Beneficiary met is between March 24, 2020 and March 23, 2022. In his initial filing, he explained that he had not complied with the two-year personal meeting requirement because travel during the COVID-19 pandemic would result in extreme hardship to him. The Director issued a request for evidence (RFE) explaining that additional evidence of extreme hardship was required to merit a discretionary waiver of the two-year personal meeting requirement. Specifically, the RFE indicated that the Petitioner's statement was insufficient to establish an extreme hardship waiver and requested evidence to establish when the parties had met, and further information to establish why meeting the two-year personal meeting requirement would result in extreme hardship.

In response, the Petitioner provided evidence regarding his medical conditions. The evidence establishes that at the age of seven, he was diagnosed with a stage 4 brain cancer, and that after he underwent treatment, including chemotherapy and radiation, he developed a compromised immune system, which causes frequent infections, as well as other physical challenges. He also provided evidence to establish he visited Nigeria, the Beneficiary's home country, twice. The first time was in March 2018, and the second time was from October 7, 2019 to November 2, 2019. It was during this second visit that he became engaged to the Beneficiary. He claims that he missed the deadline to file his fiancée petition because of COVID, and two hospitalizations that took place in late 2019.

The Director denied the petition finding that the evidence was insufficient to establish that compliance with the two-year personal meeting requirement would result in extreme hardship to the Petitioner. On appeal, the Petitioner argues that travel during COVID is a matter of life or death because of his compromised immune system. He also asserts that the Director ignored medical evidence of his serious condition.

We acknowledge the documentation from two doctors who appear to have treated the Petitioner. One of the doctors confirms the Petitioner was hospitalized in November and December 2021. However, no details are given about the length of the hospitalization, how the hospitalizations affect the Petitioner's ability to travel, or how the hospitalizations are relevant to his extreme hardship claims. To the extent the Petitioner asserts he failed to file his petition within two years of his last meeting with the Beneficiary because he was hospitalized in late 2021, he appears to misunderstand the two-year personal meeting requirement. A petitioner is not required to file a fiancée petition exactly two years after meeting a beneficiary; instead, to meet the requirement, a petitioner must show they personally met their fiancée within the two years prior to filing the petition. In this case, the Petitioner could have filed his petition at any point within the two-year period after he had last personally met the Beneficiary in October or November 2019. Thus, his claim of being hospitalized in November and December 2021 is not relevant to our determination regarding how he would suffer extreme hardship if he were required to establish the in-person meeting requirement since he could have filed

the petition at any point after he last personally met the Beneficiary and he did not need to wait to file two years after he had last met her.

This doctor also confirms the Petitioner tested positive for COVID-19 in August 2022, but does not provide any additional information about how testing positive affected his health or well-being, or how his diagnosis should inform our extreme hardship determination. The doctor states that "[the Petitioner] was unable to travel over seas [sic] due to the covid restriction." However, the letter also appears to explain that the Petitioner was under this doctor's care for only one day, May 8, 2023. Thus, because the letter lacks details and context, it is insufficient to establish the Petitioner merits an extreme hardship exemption.

Another doctor's letter is from a retired physician who appears to have previously treated the Petitioner. However, the letter provides few details about what level of care she provided and during what period of time. She explains the Petitioner's history of childhood cancer, his diagnosis, treatment, and how his treatment resulted in his now compromised immune system. The doctor also explains that it is "not advisable" for the Petitioner to travel during the COVID-19 or post-pandemic period, however the letter does not establish what extreme hardship would result from the Petitioner traveling to Nigeria. We note further that the Petitioner previously traveled at least twice to Nigeria, therefore, the evidence is insufficient to establish how traveling there again, with proper precautions, could be an extreme hardship to the Petitioner. (We note that this letter refers several times to the Petitioner's "wife," which calls into question if the Petitioner is already married, rendering this petition potentially moot.)

We acknowledge the Petitioner appears to have medical conditions however these conditions have not prevented him from traveling overseas. Furthermore, the two doctors' letters are insufficient to grant the Petitioner an extreme hardship exemption to the two-year personal meeting requirement because there is a general lack of information regarding his ability to travel with proper precautions. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. For example, neither of the letters explains if the Petitioner has received a COVID-19 vaccination and whether with additional precautions, he could travel again. *Id.* Moreover, the record lacks any documentation establishing whether the Beneficiary is able and has attempted to travel to comply with the two-year personal meeting requirement. As such, the Petitioner has not met his burden of establishing he merits a discretionary extreme hardship exemption. *Id.* Although we recognize the hardship this result may cause to the Petitioner and the Beneficiary, there is insufficient evidence to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (noting that immigration regulations carry "the force and effect of law").

III. CONCLUSION

The Petitioner has not established that the parties have previously met in person within two years before the date of filing the fiancé(e) petition, or that a discretionary waiver of the two-year personal meeting requirement is warranted pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. § 214.2(k)(2). The denial of this petition shall be without prejudice to the filing of a new fiancé(e) visa.

ORDER: The appeal is dismissed.