U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30545071

Date: MAY 21, 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 establish that the parties have a bona fide intention to marry. 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.

Page six of the Form I-129F instructions states:

> Item Numbers 1. - 3.c. Criminal Information. Indicate whether you have ever been the subject of a temporary or permanent protection order or restraining order (either civil or criminal) related to any of the crimes specified below, or arrested, or convicted of any of the crimes specified below. If you were ever arrested or convicted of any of the specified crimes, you must submit certified copies of all court and police records showing the charges and disposition for every arrest or conviction. **You must do so even if your records were sealed, expunged, or otherwise cleared, and regardless**

of whether anyone, including a judge, law enforcement officer, or attorney, informed you that you no longer have a criminal record.

The International Marriage Broker Regulation Act (IMBRA) and section 214(d)(1) of the Act require fiancé visa petitioners to disclose whether they have been convicted of certain specified crimes.[1] If a petitioner has been convicted by a court or military tribunal of any of the specified crimes,[2] they are required to submit certified copies of all court and police records showing the charges and dispositions for each of these convictions. *See generally* USCIS Policy Memorandum HQOPRD 70/6.2.11, International Marriage Broker Regulation Act Implementation Guidance 1-2 (Jul. 21, 2006). These records then become part of the I-129F, Petition for Alien Fiancé(e), record, and if the petition is approved, the Department of State will disclose the relevant criminal convictions to the Beneficiary during their consular interview. *Id.*

II. ANALYSIS

A. Bona Fide Intention to Marry

The Director denied the petition, concluding that the record was insufficient to demonstrate a bona fide intention to marry. In their request for evidence (RFE), the Director explained that the Petitioner had "admitted to the [Federal Bureau of Investigations (FBI)] that [he] submitted fraudulent financial documents in support of this [] petition," which cast doubt on his bona fide intention to marry the Beneficiary. In response, the Petitioner provided a USB flash drive, which he asserted contained ample evidence of the parties' bona fide intent to marry. He also submitted evidence of a cancelled trip he had planned to see the Beneficiary. Because the Director could not view the USB evidence, the petition was denied for insufficient evidence of the parties' bona fide intent to marry.

On appeal, the Petitioner submits a statement and evidence of the parties' bona fide intent to marry. However, we generally do not accept new evidence on appeal when a petitioner was previously put on notice of the evidentiary requirement and given a reasonable opportunity to provide that evidence. As such, and because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Furtado*, 28 I&N Dec.

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[1] The IMBRA 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), 8 U.S.C. § 1375a. The IMBRA was passed amid concerns about exploitation, domestic violence, and human trafficking associated with some international marriage broker operations. *See* U.S. Citizenship and Immigration Service Form I-129F, Petition for Alien Fiancé instructions, https://www.uscis.gov/i-129f. Its goal is to provide more transparency and protections for foreign nationals entering marriages with U.S. citizens. *See* IMBRA Information Pamphlet, http://www.uscis.gov/USCIS/Humanitarian/Battered%20Spouse,%20Children%20&%20Parents/IMBRA%20Pamphlet%20Final%2001-07-2011%20for%20Web%20Posting.pdf.

[2] The IMBRA requires a petitioner to submit information on any criminal matters related to "specified crimes." The IMBRA's specified crimes include: (1) domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking, or an attempt to commit any such crime; (2) homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause; and (3) at least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act. *See* section 214(d)(3) of the Act. In addition, any permanent protection or restraining order issued against the petitioner related to any IMBRA-specified crime must be disclosed to a beneficiary.

794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when a petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial). The Director's RFE put the Petitioner on notice of the deficiencies in his evidence and gave him an opportunity to respond to those deficiencies before his petition was denied. Because the evidence submitted by the Petitioner on appeal was requested in the RFE, we will not accept any of the new evidence submitted on appeal. *Id.* Furthermore, even if we were to accept the newly submitted evidence, which we do not, it would not demonstrate eligibility for the reasons set forth below.

With the initial petition, the Petitioner submitted sufficient evidence of his divorce from his prior two spouses to establish the parties are free to enter a legally valid marriage. The Beneficiary has not been previously married and is of legal age to marry; therefore, no evidence is needed with respect to her ability to marry. The Petitioner annotated his Form I-129F explaining that he and the Beneficiary met within the two-year period prior to the filing of the petition stating "[m]y Fiancé and I met in Accra Ghana on 08/10/2021 – 08/17/2021 and we stayed at the Labadi Beach Resort. Photos of us together and passports showing visa stamps and hotel reservations attached."

The Director's RFE put the Petitioner on notice that government records indicate he admitted to the FBI he had submitted a fraudulent financial document in support of his Form I-129F, and that this cast doubt on his and the Beneficiary's bona fide intent to marry. As noted above, in his RFE response, he submitted a USB drive with evidence of his bona fide intent to marry the Beneficiary, which the Director could not view.[3] He also provided a statement explaining that he told the FBI he submitted a fraudulent bank statement that had the date(s) altered in support of the Beneficiary's tourist visa application.[4] He asserts that the FBI likely misconstrued his statement and "assumed it was about the I-129F petition." However, this statement is insufficient to rebut the Director's concerns or overcome the deficiencies in the record stemming from his admission that he submitted an altered bank statement. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (standing for the proposition that any inconsistencies in a petitioner's evidence may lead to reevaluation of the remaining evidence offered in support of the visa petition). His statement on appeal did not provide any details about the purported bank statement or explain why he submitted an altered bank statement. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. As such, he has not established the Director erred in their determination and his appeal will be dismissed on that basis. *Id.*

B. Beyond the Decision of the Director: IMBRA Requirements

Although the Director's decision is silent as to the Petitioner's IMBRA arrests, he annotated his Form I-129F with information about his criminal record, disclosing he has been arrested or convicted of a domestic violence, sexual assault, child abuse, child neglect, dating violence, elder abuse, stalking or an attempt to commit any of these crimes, and disclosing the following two relevant arrests:

- [ ]2011, in[ ] CA, called police to remove drug intoxicated guest and he was arrested, no charges filed.

[3] The Form I-129F instructions state "Do not include . . . any non-paper materials such as CD-ROMS, DVDs, . . . or thumb drives. We will not accept these types of materials. However, we will accept photographs or copies of these items." *See*, https://www.uscis.gov/i-129f.

[4] Government records indicate the Beneficiary was denied a tourist visa on June 6, 2022.

- [redacted] 2012, in [redacted] CA, police came to his home because of intoxicated guest, and he was arrested. He was detained but no charges were filed.

Regarding his [redacted] 2012 arrest, he provided a June 10, 2014 letter from the Director of Family Violence Operations of the city of [redacted] California, stating that around March 1, 2012, the matter was reviewed by her office but no criminal charges were filed. Regarding his [redacted] 2011 arrest, he provided a letter dated May 12, 2014, from the Hearing Officer at the [redacted] Office of the City Attorney stating that a hearing was held and the matter was considered resolved and no complaint was filed. In addition, he provided a September 2021 letter from him to the [redacted] criminal division requesting certified copies of his criminal records stemming from these two domestic violence arrests. However, he did not provide certified copies of the police records for these arrests which would allow us to ascertain the underlying facts and circumstances.

Because the Petitioner has not provided sufficient information related to his IMBRA arrest(s) or offense(s) to comply with the Form I-129F's instructions, his petition must be denied. Every form, benefit request, or other document must be executed in accordance with the instructions on the form, which are incorporated into the regulation requiring its submission. 8 C.F.R. § 103.2(a)(1). Further discussion of the filing requirements for these documents is found at 8 C.F.R. § 103.2(b)(1), which provides that "[e]ach benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions."

As such, the Petitioner has not established his eligibility to classify the Beneficiary as his fiancée because he has failed to follow the Form I-129F's instructions, which is tantamount to not complying with the regulation. *See* 8 C.F.R. § 103.2(a)(1); *see also Ramirez-Coria v. Holder*, 761 F.3d 1158, 1162 (10th Cir. 2014) (concluding that the failure to follow immigration form instructions can result in the dismissal of an application or petition).

III. CONCLUSION

For the foregoing reasons, the Petitioner has not met his burden to establish he is eligible to classify the Beneficiary as his fiancée.

ORDER: The appeal is dismissed.