U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33657319

Date: SEP. 6, 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 the Beneficiary was legally able to marry him at the time of filing. 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.

Pursuant to 8 C.F.R. section 103.2(b)(1), a petitioner must establish that they are 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 marriage. *See* Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1).

The Petitioner filed the fiancée petition on May 27, 2022. On the Form I-129F, the Petitioner listed the Beneficiary as single. The Director issued a request for evidence (RFE) explaining that because the Beneficiary previously applied for a U.S. tourist visa and listed herself as married, proof of the legal termination of her prior marriage was necessary to establish her eligibility for a fiancée visa.[1] In response, the Petitioner provided a statement explaining that the "marriage she indicated in her previous visa application was a traditional marriage that ended in 2011. I have since been with [the Beneficiary] and we have a son [] who is 10 years and 5 months old." The Petitioner then requests "that [the Beneficiary's] evidence of previous marriage termination be waived to have the petition moved forward . . . ."

[1] Adjudicators have the discretion to validate assertions or corroborate evidence and information by consulting USCIS or other governmental files, systems, and databases, or by obtaining publicly available information. *See* 8 U.S.C. § 1357(b).

The Director denied the petition explaining that the relevant regulation does not provide a ground to waive the requirement that both parties in a fiancée visa petition demonstrate they are legally able and willing to enter into a valid marriage at the time of filing the fiancée petition. We agree.

On appeal, the Petitioner provides a statement explaining that on June 20, 2011, he and the Beneficiary had a traditional "knocking" ceremony to allow the Beneficiary "to move in with a promise and the understanding to have a civil ceremony later date [sic] in the USA." He also provides a letter from the Beneficiary's mother attesting to the "knocking" ceremony which was intended for the Petitioner to ask her and her late husband for "permission to marry [the Beneficiary]." The Petitioner asserts that in Ghana, women consider themselves married after being engaged, and that it was an error to classify him as her spouse on her tourist visa application. The Petitioner also provides a copy of the Beneficiary's 2011 visa application listing him as her spouse.[2]

We acknowledge the Petitioner's assertion that women in Ghana consider themselves married after their engagement, however he did not provide any objective evidence to establish his assertion is true. *See Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). Furthermore, the Petitioner's appeal statement contradicts his RFE statement. In his appeal statement, he explains the Beneficiary was not married to him following their June 2011 "knocking" ceremony. However, in his RFE response, he explained that the parties were married in a traditional ceremony. The Beneficiary's mother's statement attesting to the "knocking" ceremony is insufficient to overcome the inconsistency regarding their true marital status because it does not address the Petitioner's prior assertion that he and the Beneficiary were traditionally married. The Petitioner has not provided sufficient evidence to establish which statement is true or that the parties were legally able to enter into a valid marriage when the petition was filed. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (requiring resolution of inconsistencies in the record with independent, objective evidence pointing to where the truth lies).

For the above-stated reasons, the Petitioner has not established his eligibility to classify the Beneficiary in K-1 visa classification. Because we are unable to waive the requirements of the law for the above stated reasons, the Petitioner's fiancée petition remains denied. *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").

ORDER: The appeal is dismissed.

[2] Department of State records indicate that on three prior tourist visa applications, the Beneficiary described herself as married.