U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-S-D-

DATE: OCT. 21, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a citizen of the United States, seeks to classify the Beneficiary as a fiancé(e) of a United States citizen. *See* Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

On January 15, 2015, the Director denied the nonimmigrant visa petition because the Petitioner did not submit evidence that he and the Beneficiary has met within the 2 years immediately preceding the filing of the petition or that he merited a waiver of the meeting requirement.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

A "fiancé(e)" is defined at Section 101(a)(15)(K) of the Act as:

> subject to subsections (d) and (p) of section 214, an alien who -
>
> (i) is the fiancée or fiancé of a citizen of the United States . . . and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission[.]

Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1), states in pertinent part that a fiancé(e) petition:

> shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the 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 ninety days after the alien's arrival, except that the Secretary of Homeland Security in [her] discretion may waive the requirement that the parties have previously met in person. . . .

The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states that if all required initial evidence is not submitted with the petition or does not demonstrate eligibility, U.S. Citizenship and Immigration Services may, in its discretion, deny the petition for lack of initial evidence. The specific requirements for filing a

Form I-129F, including a description of the required initial evidence, may be found in the *Instructions* to the Form I-129F.

The Petitioner filed the Form I-129F on April 14, 2014, without sufficient supporting evidence. For this reason, on September 24, 2014, the Director issued a request for evidence (RFE) which, among other things, requested evidence that the Beneficiary and Petitioner had met in person within 2 years before the date of filing the petition. In response to the RFE, the Petitioner submitted a letter claiming that he is unable to travel to meet the Beneficiary due to health reasons. In support of his claim he submitted a letter from his doctor and medical records from his ophthalmologist.

On January 15, 2015, the Director denied the petition finding that the Petitioner had not submitted evidence to establish that the he and the Beneficiary had met between April 14, 2012, and April 14, 2014, as required under section 241(d) of the Act, or that he merited a waiver of the meeting requirement. Specifically, the Director found that the medical documentation submitted by the Petitioner did not indicate that he is unable to travel either to Senegal or to a third country to meet the Beneficiary. The Director also found that the Petitioner did not establish that the Beneficiary would be unable to visit him in the United States. On appeal, the Petitioner states that he has been ill and has had to work to support his family which has made travel to Senegal very difficult. He states that the Beneficiary was denied a visa to visit the United States. In support of his contentions he submits a copy of the Beneficiary's online nonimmigrant visa application submission dated September 14, 2012, and a photograph of himself with his two daughters.

The Petitioner admits that he has not seen the Beneficiary in person in the 2 years immediately preceding the filing of the Form I-129F on April 14, 2014. Pursuant to 8 C.F.R. § 214.2(k)(2), the Petitioner may be exempted from the requirement for a meeting with the Beneficiary if it is established that compliance would:

> (1) result in extreme hardship to the petitioner; or
>
> (2) that compliance would violate strict and long-established customs of the K-1 beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice.

The Petitioner does not contend that he would be exempt based on the second scenario. The regulation does not define what may constitute extreme hardship to the petitioner. Therefore, each claim of extreme hardship must be judged on a case-by-case basis taking into account the totality of the petitioner's circumstances. In this case, the Petitioner's claim of extreme hardship consists of financial and medical reasons.

An October 30, 2014, letter from the Petitioner's doctor indicates that he underwent rotator cuff and cataract surgeries in 2010 and reinjured his shoulder in 2012. The doctor states that the Petitioner still has major back problems with extreme pain in his knee and has a problem standing for long periods of time. He adds that the Petitioner is undergoing therapy before a decision will be made as to whether his diagnosis requires surgery. The record contains post-operative and MRI reports regarding the Petitioner's 2010 shoulder injury and surgery.

The record also contains an October 15, 2014, ophthalmologist report indicating that the Petitioner has been diagnosed with glaucoma with bilateral ocular inflammation and chronic iridocyclitis with a return visit for November 17, 2014.

While the record indicates that the Beneficiary applied for a nonimmigrant visa, it does not establish that the visa application was denied. Further, even if the Petitioner had established that the Beneficiary had not been successful in obtaining a U.S. visa in the past, the medical documentation does not indicate that the Petitioner is unable to travel to Senegal or a third country for a medical reason. Although the Petitioner has submitted evidence demonstrating that he has had rotator cuff surgery, suffers from back problems, and has had eye-related surgeries, the Petitioner has submitted no documentation establishing that these, or other conditions, prevent him from travelling to Senegal or a third country.

The Petitioner also claims extreme hardship based on the financial constraints of supporting his family. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, economic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986). Despite the Petitioner's claims, the Petitioner did not submit any evidence of his finances during the 2 year period prior to filing the Form I-129F. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

We further find that the Petitioner has not submitted sufficient documentation establishing that he is legally free to marry the Beneficiary. We note that the last page of the Petitioner's 2006 divorce from his first spouse is not present in the record. Without this page, the Petitioner has not demonstrated that his 2006 divorce was finalized by a judge or other authority. In addition, the record does not contain a certified translation of the Petitioner's divorce from the Beneficiary. *See* 8 C.F.R. § 103.2(b)(3).

The appeal will be dismissed for the above stated reasons. In fiancé(e) visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. As stated at 8 C.F.R. § 214.2(k)(2), the denial of this petition is without prejudice to the filing of a new petition.

ORDER: The appeal is dismissed.

Cite as *Matter of M-M-S-D-*, ID# 14009 (AAO Oct. 21, 2015)