



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF R-R-B-

DATE: NOV. 25, 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 fiancée of a United States citizen. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(K), 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 sustained.

The Director denied the petition because the Petitioner is subject to the filing limitation under the International Marriage Broker Regulation Act (IMBRA) of 2005, Pub. L. No. 109-162 dated January 5, 2006 and found that the Petitioner has failed to establish that he merits a favorable exercise of discretion to exempt him from the filing limitation. On appeal, the Petitioner submits a statement and additional evidence.

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:

[s]hall 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

On January 5, 2006, the President signed 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. Title VII of VAWA 2005 is entitled "Protection of Battered and Trafficked Immigrants," and contains Subtitle D, "International Marriage Broker Regulation Act" (IMBRA). IMBRA imposes limitations on the number of petitions a petitioner for a K nonimmigrant visa for an alien fiancé(e) (K-1) may file or have approved

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without seeking a waiver of the application of those limitations. If the petitioner has filed two or more K-1 visa petitions at any time in the past, or previously had a K-1 visa petition approved within two years prior to the filing of the current petition, the petitioner must request a waiver. These limitations do not apply to petitioners for a K nonimmigrant visa for an alien spouse (K-3).

A discretionary waiver is available to waive the applicable time and/or numerical limitations if justification exists, except where the petitioner has a history of violent criminal offenses against a person or persons. Factors considered in the discretionary waiver include, but are not limited to:

- Whether unusual circumstances exist (e.g. death or incapacity of prior beneficiary(ies));
- Whether the petitioner appears to have a history of domestic violence;
- Whether it appears the petitioner has a pattern of filing multiple petitions for different beneficiaries at the same time, of filing and withdrawing petitions, or obtaining approvals of petitions every few years.

Examples of acceptable evidence to support a waiver request include, but are not limited to: a death certificate, police reports, news articles describing an accident which resulted in the beneficiary's death or incapacity, or medical reports from a licensed medical professional regarding the death or incapacity of an alien approved for a prior K visa. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the adjudicator.

In this case, the Petitioner previously filed a Form I-129F petition for the Beneficiary on July 24, 2012. The petition was approved by the Director on January 17, 2013, but was returned to USCIS following the Beneficiary's interview at the U.S. Embassy in ██████████ Cambodia, on September 12, 2013. The Department of State consular officer who conducted the interview determined that the relationship between the Petitioner and the Beneficiary was entered into to evade U.S. immigration laws. The consular officer denied the Beneficiary a K-1 visa and recommended that the petition be revoked.

The Director did not revoke the approval of the above-referenced petition, but on December 13, 2013, notified the Petitioner that the Beneficiary was not issued a K-1 visa and because the validity period of the approved petition has expired, the petition would not be revalidated. The Director notified the Petitioner that he may file a new petition.

The Petitioner filed the current petition on February 18, 2014 without all the required initial evidence. For this reason the Director issued a Request for Evidence (RFE) on April 22, 2014. The Director noted that the Form G-325A, Biographic Information, submitted by the Petitioner indicated that the date of his one previous marriage listed on the Form G-325 was ██████████ 2002, but that his Certificate of Naturalization dated July 7, 2000 indicated that he was married. The Director requested that the Petitioner submit copies of all final divorce decree(s) that terminated his previous marriage(s). The Director notified the Petitioner that he is subject to IMBRA filing limitations based on the approval of the previous petition for the Beneficiary and that he needed to submit a waiver request of the filing limitation along with all evidence to support the waiver.

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In response, the Petitioner submitted a waiver request, a copy of his marriage and divorce certificate for his second marriage, and a copy of the Beneficiary's divorce decree from her previous spouse. The Petitioner failed to provide any information or submit any documentation related to his first marriage.

The Director found the response insufficient and denied the petition. In denying the petition, the Director noted that the Petitioner failed to provide the full and complete evidence requested relating to his previous marriages and marriage terminations and failed to submit any evidence in support of his waiver request. The Director also found that the Petitioner has not been transparent and forthcoming with his previous marital history and that the "rapid sequence of events" that led to the filing of the first petition for the Beneficiary and the "history of contradictory statements from the petitioner and the beneficiary has raised issues regarding the petitioner and beneficiary's intent." The Director concluded that based on the evidence of record, the Petitioner does not merit a favorable exercise of discretion. The Director denied the waiver and the petition accordingly.

On appeal, the Petitioner submits a statement and copies of the marriage and divorce certificate from both his previous marriages. In the statement, the Petitioner explains that he had been married twice, and his first marriage, which took place in ████████ Nevada in 1993, ended in divorce in 2002, which is why his 2000 Naturalization Certificate indicate he was married. The Petitioner did not explain why he had not provided any information or submitted any documentation related to his first marriage in his previous filings. The Petitioner submits documentation related to his first marriage – a copy of a marriage certificate showing the date of the marriage and a copy of a divorce decree showing the date of the termination of the marriage and indicating that he and his first wife had one child together during their marriage. Based on this evidence and copies of the marriage and divorce certificates previously submitted to the record, the Petitioner has established that he and the Beneficiary are legally able to conclude a marriage within 90 days of the Beneficiary's admission into the United States.

With regard to the Petitioner and the Beneficiary's intent to marry, the record contains a signed statement from the Beneficiary and the Petitioner stating their intent to marry within 90 days of the Beneficiary's admission into the United States. As noted above, section 214(d) of the Act states that USCIS shall approve the Form I-129F when a petitioner establishes having met the beneficiary within the two-year period preceding the filing of the Form I-129F, a bonafide intention to marry, and the ability to marry within 90 days of the beneficiary's arrival in the United States.

The Director found the Petitioner did not merit a waiver of the IMBRA filing limitation as a matter of discretion. As indicated above, factors considered in the discretionary waiver of the filing limitation include, but are not limited to, whether unusual circumstances exist (e.g. death or incapacity of prior beneficiary(ies)); whether the petitioner appears to have a history of domestic violence; and whether it appears the petitioner has a pattern of filing multiple petitions for different beneficiaries at the same time, of filing and withdrawing petitions, or obtaining approvals of petitions every few years. Acceptable evidence for a waiver request includes, but is not limited to, a death certificate, police reports, news articles describing an accident which resulted in the beneficiary's death or incapacity, or medical reports from a licensed medical professional regarding the death or incapacity of an alien approved for a prior K visa.

We note that most of the factors listed above are relevant to petitioners who have previously filed petitions for different beneficiaries or have filed and withdrawn petitions. In the present case, the previously approved visa petition that renders the Petitioner subject to the IMBRA filing limitation was filed for the same beneficiary. It was approved by the Director, the Beneficiary applied for a nonimmigrant K-1 visa based on the petition, and the petition was never withdrawn by the Petitioner. Rather, the K-1 visa application was denied by a consular officer, who recommended that the petition be revoked. The Director did not revoke the petition, but notified the Petitioner that the petition could not be recertified because the initial period of certification had expired but that he could file a new petition. The evidence in the record does not show that the Petitioner has a history of domestic violence or support a finding that the Petitioner has a history of filing multiple petitions for multiple beneficiaries or of filing and withdrawing petitions. We also find that although the Petitioner has not fully explained why he did not mention his first spouse when submitting the petition, he now submits evidence that the marriage was terminated. Further, we note that on the original Form I-129F, he listed his second wife and disclosed on the form that he had filed a Form I-130, Petition for Alien Relative, for her. We do not find that his failure to list his first marriage, which ended in 2002, raises issue regarding the current intent of the Petitioner and Beneficiary to marry or that because of this omission alone he does not merit a waiver of the filing limitation as a matter of discretion.

We find that the Petitioner has established that he merits a discretionary waiver of the IMBRA filing limitation and has overcome the basis for the Director's denial of the instant petition. The Director's decision will be withdrawn.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of R-R-B-*, ID# 13221 (AAO Nov. 25, 2015)