



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

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

MATTER OF S-M-N-

DATE: AUG. 16, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a U.S. citizen, seeks to classify the Beneficiary as his fiancée. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(K), 8 U.S.C. § 1101(a)(15)(K). A U.S. citizen may petition to bring a fiancé(e) (and that person's children) to the United States in K nonimmigrant classification for marriage. The U.S. citizen must establish that the parties have previously met in person within two years before the date of filing the Form I-129F, Petition for Alien Fiancé(e) (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 90 days of the beneficiary's admission as a K nonimmigrant.

The Director, California Service Center, denied the fiancé(e) petition, concluding that the Petitioner is subject to the filing limitations specified at section 214(d)(2)(A) of the Act, 8 U.S.C. § 1184(d)(2)(A), and found that the Petitioner had not requested a waiver and otherwise failed to establish that he merits a favorable exercise of discretion to exempt him from the filing limitations.

On appeal, the Petitioner states that the current and immediately preceding fiancé(e) petition beneficiaries are the same person, before whom he had only one additional fiancée beneficiary.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

Subject to subsections (d) and (r) of section 214 of the Act, nonimmigrant K classification may be accorded to an alien who "is the fiancée or fiance 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" *See* section 101(a)(15)(K)(i) of the Act.

Section 214(d)(1) of the Act states that a fiancé(e) petition can be approved only if the 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 the beneficiary's arrival.

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Fiancé(e) petitions are also subject to certain filing limitations for those petitioners who: (1) have previously filed a fiancé(e) petition for two or more alien fiancé(e)s; or (2) received the approval of a prior fiancé(e) petition and less than two years have passed since the filing date of that previously-approved fiancé(e) petition. *See* section 214(d)(2)(A) of the Act. Petitioners who are subject to the filing limitations must submit a written waiver request, and whether to grant the waiver is at the discretion of U.S. Citizenship and Immigration Services (USCIS). *See* sections 214(d)(2)(B)-(C) of the Act; *see also* Memorandum from Michael Aytes, Associate Director for Domestic Operations, USCIS, HQPRD 70/6.2.11, *International Marriage Broker Regulation Act Implementation Guidance* (July 21, 2006), <http://www.uscis.gov/laws/policy-memoranda>, and Instructions for Petition for Alien Fiance(e).

II. ANALYSIS

The Petitioner filed this fiancé(e) petition on May 28, 2014. His previous fiancé(e) petition for this Beneficiary was denied for having been filed before his [REDACTED] 2012 divorce from his immediately preceding spouse. USCIS records indicate he filed an earlier fiancé(e) petition in 1998 for the spouse he divorced in 2012. The Director found that the Petitioner required a waiver for having filed fiancé(e) petitions for two or more people, noted other deficiencies in initial evidence, and sent the Petitioner a notice of intent to deny (NOID), allowing him to submit documentation demonstrating that a waiver was justified.

Responding to the NOID, the Petitioner submitted evidence showing his fiancée present in the United States in 2003, a hotel voucher and a reservation confirmation for a claimed May 30, 2012 to June 5, 2012 [REDACTED] hotel stay, and the 1995 divorce decree. The Director determined that the Petitioner had provided insufficient evidence of eligibility for a multiple filer waiver, identified factual inconsistencies regarding his marital history and circumstances of his first meeting with the Beneficiary and, accordingly, denied the fiancé(e) petition.

On appeal, the Petitioner submits a brief that states, in part, that he is not required to request a waiver of the filing limitations.

A. Waiver Requirement

The plain language of section 214(d)(2)(A) of the Act assigns multiple filer status based on the number of people (“applying aliens”) petitioned, not the number of fiancé(e) petitions. The record of proceedings reflects that the Petitioner filed three fiancé(e) petitions, two for the same beneficiary (one of which was denied) and one for a prior spouse. The Petitioner, therefore, does not require a waiver of the filing requirements because he has petitioned for only one fiancée other than the current Beneficiary, and that prior fiancé(e) petition was approved more than two years prior to the filing of the current one. Accordingly, we withdraw this ground of denial.

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B. *Bona Fide* Intent to Marry

The Petitioner submits evidence claiming to show that the parties met in person during the requisite two years between May 28, 2012 and May 28, 2014, they are unmarried and legally able to conclude a valid marriage, and the Petitioner intends to marry the Beneficiary within 90 days of her U.S. admission. However, the Beneficiary's statement of her intent to marry the Petitioner does not specify that she intends to marry him within 90 days of her admission.

The Petitioner and the Beneficiary must each demonstrate a *bona fide* intention to marry. Besides not providing a statement from the Beneficiary or other evidence of her intent to marry the Petitioner within 90 days of being admitted to the United States, the Petitioner has not provided a consistent account of the circumstances of their first meeting, which led to their claimed 2012 personal meeting in [REDACTED] or evidence of the correspondence that led to the 2012 meeting.

In his 2012 fiance(e) petition, the Petitioner stated that he met the Beneficiary in [REDACTED] Texas seven years earlier, or in 2005. But, in a statement supporting that petition, he indicated they met in [REDACTED] Texas 10 years earlier, or in 2002. Further confusing the timeline of the couple's alleged first meeting is his 2014 fiance(e) petition, currently on appeal before us, on which the Petitioner stated that the couple met in New York in 2003. Not only does the Petitioner provide an inconsistent account of when he and the Beneficiary first met, but he also does not demonstrate any ongoing communication between him and the Beneficiary during their alleged nine year relationship until their claimed personal meeting in [REDACTED] in 2012.

Regarding the alleged [REDACTED] meeting, although the Petitioner's passport stamps and flight itinerary place him there in 2012, there is no similar evidence for the Beneficiary. The [REDACTED] hotel "vouchers" are not hotel receipts, confirming either the Petitioner's or the Beneficiary's hotel stays, but rather reservation confirmations issued by a travel agent that, we note, contain multiple misspellings. Regarding the photographs, we are unable to determine where or when they were taken.

Finally, on both fiancé(e) petitions for this Beneficiary and on his Form G-325A, Biographic Information Sheets, the Petitioner does not disclose his marriage to the spouse he divorced in 1995, despite specific questions on these forms for the Petitioner to provide this information. The Petitioner's lack of candor regarding his marital history coupled with his inconsistent accounting of the couple's relationship does not demonstrate a *bona fide* intent to marry.

As the Petitioner has not established having met his fiancée within the required two-year period nor submitted a statement from the Beneficiary or any other evidence to establish her intent to marry him within 90 days of her admission to the United States, he has not satisfied two specific requirements for approval of his fiancé(e) petition. In addition, due to the factual discrepancies noted above, the Petitioner has not established the *bona fides* of the couples' intent to marry. Accordingly, the approval of the fiancé(e) petition is not warranted.

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III. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-M-N-*, ID# 16711 (AAO Aug. 16, 2016)