U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20579601

Date: AUG. 30, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner, an information technology consulting business, seeks to employ the Beneficiary as a network/system support specialist. It requests skilled worker classification for the Beneficiary under the third-preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a noncitizen for lawful permanent resident status to work in a position that requires at least two years of training or experience.

The Director of the Texas Service Center initially approved the petition. However, the Director subsequently revoked the approval based on the ground that the Beneficiary was barred from receiving the requested immigration benefit under section 204(c) of the Act because there was substantial and probative evidence that the Beneficiary's marriage to a U.S. citizen was entered into for the purpose of evading U.S. immigration laws. In addition, the Director determined that the record did not demonstrate that the Beneficiary possessed the requisite experience to meet the requirements of the labor certification and the Petitioner's ability to pay the prospective wage.

In this proceeding, it is the Beneficiary's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).[1] Upon *de novo* review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification (ETA Form 9089) from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration

[1] The Beneficiary requested to change (port) his employer to [redacted] under section 204(j) of the Act, 8 U.S.C. § 1154(j). Accordingly, the Beneficiary is an "affected party" for purposes of revocation proceedings. *Matter of V-S-G-Inc.*, Adopted Decision 2017-16 (AAO Nov. 11, 2017).

Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

In addition, section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may "for good and sufficient cause, revoke the approval of any petition." By regulation this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). A notice of intent to revoke (NOIR) "is not properly issued unless there is 'good and sufficient cause' and the notice includes a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence." *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987) (providing that "[i]n determining what is 'good and sufficient cause' for the issuance of a notice of intention to revoke, we ask whether the evidence of record at the time the notice was issued, if unexplained and unrebutted, would have warranted a denial based on the petitioner's failure to meet his or her burden of proof").

Further, section 204(c) of the Act, 8 U.S.C. § 1154, provides that:

> Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the [noncitizen] has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of [a noncitizen] lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General[2] to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the [noncitizen] has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

Thus, section 204(c) of the Act provides that no family-based or employment-based immigrant petition shall be approved if the noncitizen has entered into a marriage, or attempted or conspired to do so, for the purpose of evading U.S. immigration laws. Furthermore, if substantive and probative evidence indicates that a beneficiary entered into a prior marriage to evade immigration laws, section 204(c) of the Act bars a petition's approval even if there was no finding of a fraudulent marriage in prior petition proceedings. *Matter of Pak*, 28 I&N Dec. 113, 116-118 (BIA 2020).

II. ANALYSIS

The issue we will address on appeal is whether the record contains substantial and probative evidence showing that the Beneficiary previously entered into a marriage in an attempt to evade the immigration laws. The Beneficiary entered the United States as a visitor in October 1994. He married [redacted] (born on [redacted] 1997) in [redacted] 1998 in [redacted] New York. Two weeks later, [redacted] signed and dated Form I-130, Petition for Alien Relative, seeking to classify the Beneficiary

[2] In *Matter of Samsen*, 15 I&N Dec. 28 (BIA 1974), the Board of Immigration Appeals (BIA) held that a determination of whether a marriage was entered into for the purpose of evading the immigration laws is to be made on behalf of the Attorney General by the district director in the course of adjudicating the subsequent visa petition.

as the spouse of a U.S. citizen under section 201(b)(2)(A)(i) of the Act. In support of the petition, the record contains Form G-325A, Biographic Information, for the Beneficiary and [redacted] The Beneficiary indicated that he resided at 1586 [redacted] Street, [redacted] New York, since October 1994. [redacted] indicated that she has resided at that same address since March 1998 and previously resided at 1893 [redacted] Avenue, [redacted] New York, from February 1992 to March 1998. In addition, the record includes a copy of [redacted] birth certificate and their marriage registration and certificate.

The Beneficiary and [redacted] were requested for an interview at the New York District Office in March 2004. The record contains a request from the Beneficiary to reschedule the interview due to his medical issues. However, the Director denied the petition for [redacted] failure to appear at the interview. Subsequently, [redacted] purportedly filed Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals of the Decision of the District Director, claiming that she "personally went to [the] office in NYC, NY and requested a new interview date."

In 2007, the Petitioner filed the employment petition and the Beneficiary concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status. The Beneficiary claimed no children on his adjustment application but claimed a spouse [redacted] In addition, the Beneficiary indicated on the accompanying Form G-325A that he divorced [redacted] in [redacted] 2004 and married [redacted] in the same month. Further, the Beneficiary listed a previous address of 1291 [redacted] Parkway, [redacted] New York, from June 2000 to January 2006. According to the Judgment of Divorce, which was filed in September 2004, the marriage was "dissolved by reason of: abandonment of the Plaintiff (Beneficiary) by the Defendant [redacted] for a period of more than one year."

As discussed in the Director's notice of intent to revoke (NOIR), USCIS officers interviewed [redacted] at her home address and confirmed her identity through personal identification:

- She confirmed her signature on Form I-130 but did not remember signing it.
- After being shown a photograph of the Beneficiary, she did not recognize him.
- She has never resided at the 1586 [redacted] Street, [redacted] New York address and has "always been [redacted]
- She stated that she has never resided with the Beneficiary and the name nor photograph looked familiar.
- She indicated that she never consummated the marriage and never had any relations with the Beneficiary.
- In responding to whether she filed for divorce, she stated that "I didn't even know I was married. I don't ever remember marrying the person. If I did, my mother who was a scammer may have helped me. I really don't remember."
- In 1998, she stated that she was residing at [redacted] address in New York with her father until she was 22 years old and has lived at her current [redacted] address for the past 10 years.
- In responding to whether she was paid any money to marry the Beneficiary, she stated "[n]o, I don't remember anything. I don't remember anything from that part of my life."
- After being shown the Form EOIR-29, she indicated the signature was not hers and "I don't even sign like that."
- After being shown the 2004 marriage interview notice containing the 1586 [redacted] Street, [redacted] New York address, she stated that she never resided at the address and she had a child in [redacted] 2004.

Included in the NOIR, the Director indicated that U.S. Department of State records reflected that the Beneficiary and [redacted] are the parents of a child born in [redacted] New York in [redacted] 2001. The residence is listed at 1291 [redacted] Parkway, [redacted] New York address, which the Beneficiary claimed to have resided from June 2000 to January 2006 (Form G-325A). The child's birth occurred during the marriage with [redacted] and the Beneficiary was residing with [redacted] at the [redacted] Parkway address when he was purportedly living with [redacted] at the 1586 [redacted] Street, [redacted] New York address.

In response to the NOIR, the Beneficiary asserted:

> Despite the adjudicator's mischaracterization of the record, the facts in this case, whether in isolation or when taken together, consists of no direct evidence, but rather only circumstantial evidence that simply do not provide support for the Service to infer a fraudulent marriage. The record contains no evidence of fraud other than a disputed statement by the alleged petitioning spouse, more than twenty years after the Form I-130 Petition for Noncitizen Relative was filed on behalf of the beneficiary. On its face, the statement relied upon in making the marriage fraud finding has major reliability issues. For example, the NOIR is devoid of any statement or showing of proof that the immigration officer (IO) located the same [redacted] who filed the petition in 1998. The [redacted] interviewed by the IO on August 2, 1998, perhaps carried the same name, but by her own admission during the interview, lived at a different address, likely possessed a different phone number, and had no knowledge of either the marriage (which itself would have been verified with more reliable identification in 1998 by the NY Court where the marriage was registered) or the petition itself. Further, the [redacted] interviewed by the IO appears to be inherently unreliable, stating that she (1) "I don't remember anything, I don't remember anything from that part of my life."; and (2) states that the signature was not in fact her own after admitting that it was her signature several questions earlier. More likely than not, the adjudicator assigned an inappropriate amount of weight to a statement made by this [redacted] when she states that "if" she had been married at all, it was due to the workings of her mother whom she described as a "scammer," however no effort is made at all to qualify this statement or confirm through search of this [redacted] mother whether these were marriage fraud scams to obtain an immigration benefit or simply a different type of scam altogether. Therefore, despite the adjudicator's perhaps, overzealous and overactive immigration in an effort to mischaracterize the evidence, if one can in fact call these statements evidence, the information provided by this [redacted] on August 2, 2018, do not suggest that the beneficiary entered into a marriage with the intent of evading the immigration laws of the United States. Rather, the information would suggest that the IO simply interviewed the wrong individual, twenty years after the fact.

The Beneficiary also claimed that the birth of his child with [redacted] is "nothing but wild speculation, at best" and "proves nothing other than that the marriage . . . had perhaps deteriorated some time in 2001."

In the notice of revocation (NOR), the Director rebutted the Beneficiary's assertions. Specifically, the Director pointed out that officers identified [redacted] through her personal identification. In addition, the Director indicated that [redacted] recognized her signature on Form I-130 but did not recognize the signature on Form EOIR-29. Furthermore, the Director pointed out that [redacted] denied ever living with the Beneficiary and did not present evidence showing such.

On appeal, the Beneficiary makes the nearly identical arguments he made in response to the Director's NOIR without mentioning the Director's findings in the NOR. In fact, the Beneficiary does not address the Director's discussion of [redacted] identity through personal identification, the recognition of her signature on Form I-130 but not on Form EOIR-29, and the denial of her ever residing with him.

USCIS cannot approve an immigrant petition for a beneficiary who "attempted or conspired to enter into a marriage for the purpose of evading the immigration laws." Section 204(c) of the Act. The "central question" in determining whether a "fraudulent" or "sham" marriage occurred is whether the parties "intended to establish a life together at the time they were married." *Matter of P. Singh*, 27 I&N Dec. 598, 601 (BIA 2019) (citations omitted). USCIS must examine a record to determine if there is "substantial and probative evidence" of fraud warranting a petition's denial under section 204(c) of the Act. 8 C.F.R. § 204.2(a)(1)(ii); *P. Singh*, 27 I&N Dec. at 602.

A petitioner bears the initial burden of proving a beneficiary's eligibility for a requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361. If a record contains evidence of marriage fraud, a petitioner must generally rebut that derogatory information by the same preponderance-of-evidence standard. *P. Singh*, 27 I&N Dec. at 606. If, however, USCIS denies (or revokes) a petition under section 204(c) of the Act based on marriage fraud, a record must contain substantial and probative evidence of the fraud, meaning evidence that a marriage was more than probably a sham. *Id.* at 606-07. If substantive and probative evidence indicates that a beneficiary entered into a prior marriage to evade immigration laws, section 204(c) of the Act bars a petition's approval even if there was no finding of a fraudulent marriage in prior petition proceedings. *Pak*, 28 I&N Dec. at 116-118.

In this case, the record contains substantial and probative evidence that the Beneficiary conspired to enter a marriage for the purpose of evading the immigration laws. The Beneficiary asserts that the Director relied on circumstantial evidence. However, the Director evaluated the statements of a direct party to the marriage – [redacted] herself, which does not reflect circumstantial evidence.

Furthermore, the Beneficiary alleges USCIS officers interviewed another person named [redacted] that did not marry and file the petition on his behalf. The record reflects that USCIS officers identified the individual with whom they interviewed as [redacted] born on [redacted] 1977. Both the individual's full name and date of birth matched the Petitioner who filed the petition on behalf of the Beneficiary. In addition, the individual presented a New York State Commercial Driver's license containing the individual's name, date of birth, and photograph. The record shows that the USCIS officers interviewed the same person who married the Beneficiary and filed a petition on his behalf.

In addition, the Beneficiary contends that [redacted] is "inherently unreliable" because she stated that "the signature was not in fact her own after admitting that it was her signature several questions

earlier." Again, as discussed by the Director, [redacted] verified her signature on Form I-130 but refuted her signature on Form EOIR-29; [redacted] did not provide conflicting statements regarding the same form.

Although he claims that Service officers interviewed a different person named [redacted] which we have already addressed, the Beneficiary has not offered evidence to support his assertions. The Beneficiary, for example, did not provide supporting evidence from his former spouse indicating that she never spoke to USCIS officers about her prior marriage to him, nor did he submit evidence establishing the bona fides of the marriage.

In light of the above, [redacted] statements reflect substantial and probative evidence showing the Beneficiary's marriage was for the purpose of evading the immigration laws. [redacted] did not recognize the Beneficiary's picture even though she was married to him for over six years, she did not recognize his name, she never resided at the [redacted] address contained in the immigration paperwork, she never resided with him at any other residences, she never had any relations with him, and she did not remember marrying him.

The record also contains additional derogatory information and evidence. The Beneficiary resided with [redacted] and fathered a child with her in 2001 even though he previously claimed that [redacted] appeared at their immigration interview in March 2004, a month after [redacted] gave birth to a child, requesting a reschedule of their interview.[3] Further, although the Beneficiary purportedly lived with [redacted] at the 1586 [redacted] Street, [redacted] New York address, he was actually residing with [redacted] at the 1291 [redacted] Parkway, [redacted] New York address. Moreover, [redacted] stated that the signature on Form EOIR-29 did not match her signature, and the record does not show that she filed the form. When considered with the statements of [redacted] the record reflects substantial and probative evidence showing that the Beneficiary's marriage was a "fraudulent" or "sham" marriage in an attempt to evade the immigration laws.

Because section 204(c) of the Act bars approval of any subsequent petition, we need not address the Beneficiary's work experience and the Petitioner's ability to pay the prospective wage, and we reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Based on the evidence of record, we agree that there is substantial and probative evidence that the Beneficiary entered into his marriage in an attempt to evade U.S. immigration laws. Therefore, section 204(c) of the Act bars the approval of this petition, and the instant appeal will be dismissed.

ORDER: The appeal is dismissed.

[3] The Beneficiary did not list any children on his Form I-485, even though his child was seven years old at the time.