U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29259314

Date: DEC. 10, 2024

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Standalone Investor

The Petitioner seeks classification as an immigrant investor pursuant to the Immigration and Nationality Act (the Act) section 203(b)(5), 8 U.S.C. § 1153(b)(5).[1] This fifth preference (EB-5) classification makes immigrant visas available to noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the United States economy and create at least 10 full-time positions for qualifying employees. A noncitizen may invest in a project associated with a United States Citizenship and Immigration Services (USCIS) designated regional center. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, section 610, as amended.

The Chief of the Immigrant Investor Program Office denied the petition, concluding that approval of the petition is prohibited under section 204(c) of the Act, 8 U.S.C. § 1554(c). Specifically, the Chief concluded that the record includes substantial and probative evidence that the Petitioner engaged in a sham marriage solely for the purpose of obtaining an immigration benefit. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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). Upon review, we will dismiss the motion.

I. LAW

USCIS cannot approve a visa petition for a foreign national who attempted or conspired to enter a marriage "for the purpose of evading the immigration laws." Section 204(c); 8 C.F.R. § 204.2(a)(1)(ii). To determine the existence of a fraudulent or sham marriage, adjudicators must consider 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) (citing *Matter of Laureano*, 19 I&N Dec. 1, 2–3 (BIA 1983) *Matter of McKee*, 17 I&N Dec. 332, 334 (BIA 1980)).

[1] On March 15, 2022, President Joseph Biden signed the EB-5 Reform and Integrity Act (RIA), which made significant amendments to the EB-5 program, including the designation of targeted employment areas and the minimum investment amounts. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner filed their petition prior to the enactment of RIA, the relevant law then in existence governs this appellate adjudication.

To sustain a marriage fraud determination, USCIS must conclude there is "substantial and probative evidence" that the foreign national "has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws." 8 C.F.R. § 204.2(a)(1)(ii). The Board of Immigration Appeals (Board) has clarified that evidence is substantial and probative when it establishes "that it is more than probably true that the marriage is fraudulent." *P. Singh*, 27 I&N Dec. at 607; *see also Mestanek v. Jaddou*, 93 F.4th 164, 173 (4th Cir. 2024); *Iyawe v. Garland*, 28 F.4th 875, 879 (8th Cir. 2022); *Zerezghi v. USCIS*, 955 F.3d 802, 816 (9th Cir. 2020) (each citing *P. Singh*). As the Board's language reflects, this standard falls between the preponderance and clear and convincing evidence standards. *P. Singh*, 27 I&N Dec. at 607 n.7.

In *P. Singh*, the Board stated "any relevant evidence" could be considered in assessing marriage fraud and that "[i]n determining if the evidence of marriage fraud is substantial and probative, that is, whether it establishes that it is more than probably true that the marriage is fraudulent, the nature, quality, quantity, and credibility of the evidence in the record should be considered in its totality." *Id.* at 610. The Board noted this assessment may be based on either direct or circumstantial evidence. *Id.* In most circumstances, USCIS officers should not give conclusive effect to determinations made in a prior proceeding and instead should reach an independent conclusion based on the evidence before them. *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

II. ANALYSIS

A. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

As thoroughly discussed in the Chief's decision and in our decision on appeal, the record shows that the Petitioner was the beneficiary of a Form I-130, Petition for Alien Relative, filed in October 2010 by his United States citizen spouse at the time, [redacted] That petition was denied in February 2011 because neither the Petitioner nor his wife appeared at the USCIS Los Angeles District Office for the scheduled interview. The Petitioner also withdrew his Form I-485, Application to Register Permanent Residence or Adjust Status, which was associated with that petition one day prior to the scheduled interview.

When the Petitioner later filed the instant petition in 2017, his marriage to Ms. [redacted] became the focus of the Chief's analysis and correspondence due to the couple's engagement of [redacted] to assist them with filing the petition based on that marriage. Specifically, the Chief noted that Mr. [redacted] and two other individuals were arrested and convicted for their arrangement of sham marriages as the result of an investigation by Homeland Security Investigations (HSI). The Chief also stressed that the physical address on [redacted] California listed by the Petitioner on numerous USCIS forms he signed was a mailbox address and was associated with Mr. [redacted] marriage fraud ring. They concluded that the record included substantial and probative evidence that the Petitioner's marriage to Ms. [redacted] was a sham and entered into for the purpose of evading

immigration laws. In our appeal decision, we agreed with Chief's conclusions, and noted that the Petitioner had not submitted new evidence showing cohabitation or other attempts to establish a life together with Ms. [redacted]

In support of his motion to reopen, the Petitioner submits a new sworn affidavit, together with three sworn affidavits from family members. He also provides press releases concerning the arrest and conviction of [redacted] and his accomplices. The Petitioner asserts that these new facts show that he did not intend to evade immigration laws, as they demonstrate, respectively, that he married his first wife despite the objections of his family, and that he was a victim of Mr. [redacted] and his associates' scheme rather than a part of it.

The Petitioner's new affidavit, however, does not fill in the many gaps in the documentary evidence. For example, while he asserts that the [redacted] address was a mailing address for Mr. [redacted] and not "our home address," he makes no attempt to identify any address he may have shared with Ms. [redacted] In addition, the Petitioner initially claims that Mr. [redacted] notified him in late November of notices for his biometric appointment and interview appointment, and that after receiving the biometric appointment notice he never again heard from Mr. [redacted] or Ms. [redacted] However, USCIS records indicate that the Petitioner's interview notice was issued on January 31, 2011, and was addressed to the [redacted] address. It is unclear how the Petitioner could have been aware of the date of his interview absent communication with Mr. [redacted] or Ms. [redacted] It is the Petitioner's burden to resolve this and the other discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Turning to the affidavits from the Petitioner's family, they indicate that they were against the Petitioner's marriage, and they describe the emotions experienced by the Petitioner and themselves surrounding this marriage and ultimate annulment.[2] However, as we noted in our previous decision, affidavits alone are not generally sufficient to overcome evidence of marriage fraud without objective documentary evidence to corroborate the assertions made. 8 C.F.R. § 204.2(a)(i)(B)(5). Despite the Petitioner having had multiple opportunities to submit evidence to establish the bona fides of his marriage, the record remains devoid of such documentation. In addition, none of the Petitioner's family members indicate that they ever met Ms. [redacted] or witnessed her together with him, let alone witnessed them living together or acting as a married couple. This new evidence is therefore insufficient to overcome our previous conclusion that the marriage was entered into for the sole purpose of evading the immigration laws.

As for the press releases, the Petitioner asserts that because they show that Mr. [redacted] falsely portrayed himself as an attorney, he was a victim of Mr. [redacted] and not an active participant in his crimes. In support of this contention, he cites to *United States v. Spitler*, 800 F.2d 1267 (4th. Cir, 1986) and a U.S. Supreme Court decision on which it relied, *Gebardi v. United States*, 287 U.S. 112 (1932). However, the issue in this matter is not whether the Petitioner can be criminally charged with conspiracy to commit visa fraud and marriage fraud, the crimes for which Mr. [redacted] was convicted.

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[2] We note that the affidavit of [redacted] the Petitioner's sister, states that the Petitioner travelled to [redacted] and "met a girl [redacted] who he had been in contact with." As this timeline conflicts with the Petitioner's own statement that he first met and exchanged contact information with Ms. [redacted] at a party in [redacted] and is material to the issue of when and how he first met or contacted her and thus to his intent at the time of the marriage, this discrepancy must be addressed in any further proceedings in this matter. *Id.*

We consider only whether the Petitioner is subject to the bar under section 204(c) of the Act for having engaged in a sham marriage to circumvent immigration laws, or attempting or conspiring to do so.

While Mr. [redacted] may have misled the Petitioner regarding his status as a licensed attorney, this does not absolve the Petitioner of his responsibility for ensuring the accuracy and truthfulness of the information on the forms which he signed. His signature "establishes a strong presumption" that he knew and assented to the contents. *See Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). The Petitioner admits in his sworn affidavit on motion that he reviewed the forms, and as noted above claims that Mr. [redacted] advised him that "this is the correct and most efficient way to receive any correspondence" in response to his questioning the use of the [redacted] address. Nevertheless, both the Petitioner and Ms. [redacted] completed and signed all forms, for both mailing addresses and physical residences, using the [redacted] address, thus creating a false picture of cohabitation. We also note that the Petitioner continued to use the [redacted] address when requesting withdrawal of his Form I-485 in February 2011, again despite his assertion that he was no longer in contact with Mr. [redacted] and his associates after December 2010.

The Petitioner also asserts in his new affidavit that he did not meet Mr. [redacted] until *after* his marriage, implying that he could not have been involved in the scheme at the time of the marriage and that his marriage did not follow the pattern noted in both of the press releases of sham marriages arranged by Mr. [redacted] between recruited and paid United States citizens and foreign nationals seeking permanent residency. But the address used by both he and Ms. [redacted] on the "License and Certificate of Marriage"[3] is also listed in the HSI report as being associated with Mr. [redacted] and his marriage fraud ring, thus strongly indicating his involvement with their marriage and contradicting the Petitioner's assertion concerning when he first met Mr. [redacted].[4]

The new evidence submitted with the Petitioner's motion does not overcome our determination that he is subject to the marriage fraud bar at section 204(c) of the Act.

B. Motion to Reconsider

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

The Petitioner asserts on motion that our conclusion that the record includes substantial and probative evidence is in error because the record does not include "exceptionally obvious" evidence of his intent to evade immigration laws. But in order to show that there is substantial and probative evidence of marriage fraud, we need show that "it is more than probably true that the marriage is fraudulent," not that the fraud was "exceptionally obvious." *P. Singh,* 27 I&N Dec. at 607. In support of his assertion, the Petitioner cites to a circuit court decision involving a quick succession of divorces and marriages

[3] The Petitioner and Ms. [redacted] both signed this document under penalty of perjury, declaring that they lived at that address as spouses.

[4] The same address also appears on both of their Forms G-325 Biographic Information, as their residence prior to [redacted] and the Petitioner's Form I-693, Report of Medical Examination and Vaccination Record

that was found to be a fraudulent attempt to circumvent the immigration laws. *Bu Roe v. I.N.S.*, 771 F.2d 1328 (9th. Cir. 1985). But there are many factors which may show that it is more than probably true that a marriage was entered into for the purpose of evading immigration laws, including "significant inconsistencies coupled with minimal documentary evidence of a shared life." *P. Singh* at 609. Here, the Petitioner has not sufficiently explained or resolved the discrepancies in the addresses on the forms which he signed, nor does the record include objective documentary evidence to support his vague assertions regarding when or where he met Ms. [redacted] or that they cohabitated or even communicated after their marriage.

In addition, investigative reports "are especially important pieces of evidence that may reveal the presence of fraud." *Id.* As we noted in our previous decision, the HSI report identified the Petitioner as the beneficiary of a sham marriage and listed the addresses provided on forms that he and Ms. [redacted] signed as associated with Mr. [redacted] marriage fraud scheme.

The Petitioner also asserts that, because he withdrew his Form I-485 application,[5] his marriage was not entered into for the purpose of evading the immigration laws. However, section 204(c) bars a petition's approval even where no immigration benefit was sought. *Matter of Isber,* 20 I&N Dec. 676, 678 (BIA 1993) (finding that Congress extended the application of section 204(c) to marriages where no immigration benefits were sought, including "in connection with undercover Service investigations of marriage fraud rings.")

On motion to reconsider, the Petitioner has not established that our previous decision, concluding that there is substantial and probative evidence that he entered into his first marriage for the purpose of evading immigration laws, was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[5] Although the Petitioner asserts that he withdrew the I-130 petition filed on his behalf, the submitted evidence relates to his request to withdraw his I-485 application one day prior to his scheduled interview. The I-130 petition was denied as abandoned,