MATTER OF P- CORP.

DATE: JUNE 22, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a parking business, seeks to employ the Beneficiary as a cashier. It requests classification of the Beneficiary as an unskilled worker under the third preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent resident status to work in a position that requires less than two years of training or experience.

The Director of the Vermont Service Center initially approved the petition. Subsequently, the Director revoked the petition's approval because, pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c), the Beneficiary had previously engaged in marriage fraud for the purpose of evading the immigration laws.

The Petitioner appealed the decision. We rejected the appeal as untimely and remanded the matter to the Director to review as a motion. The Director of the Nebraska Service Center adjudicated the motion and affirmed the revocation of the petition's approval.[1]

The matter is now before us on appeal. On appeal, the Petitioner continues to assert that the Beneficiary did not engage in marriage fraud. Upon *de novo* review, we will dismiss the appeal.

I. LAW AND ANALYSIS

A. The Employment-Based Immigration Process

Employment-based immigration is generally a three-step process. First, an employer obtains an approved ETA Form 9089, Application for Permanent Employment Certification (labor certification) from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154.

[1] The Vermont Service Center no longer adjudicates employment-based immigrant visa petitions. Therefore, the Director of the Nebraska Service Center properly considered revocation of the petition's approval.

Finally, if USCIS approves the immigrant visa petitioner, the foreign national applies 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.

B. The Notices of Intent to Revoke

After granting a petition, USCIS may revoke the petition's approval "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. If supported by the record, a director's realization that a petition was erroneously approved may justify revocation. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Good and sufficient cause exists to issue a notice of intent to revoke (NOIR) where the record at the time of the notice's issuance, if unexplained or unrebutted, would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987). Similarly, revocation is proper if the record at the time of the decision, including any explanation or rebuttal evidence provided by a petitioner, warranted a petition's denial. *Id.* at 452.

In the instant case, good and sufficient cause supported the Vermont Service Center Director's issuance of the NOIR. *See Oddo v. Reno*, 17 F. Supp. 2d 529 (E.D. Va. 1998) (holding that the immigration service did not err in revoking a petition's approval under section 204(c) of the Act where a beneficiary's spouse told officers that the marriage was entered into for immigration purposes). As the NOIR indicated, the record at the time of the notice's issuance indicated that the Beneficiary had "entered into a marriage for the sole purpose of circumventing U.S. immigration laws." The U.S. citizen spouse of the Beneficiary told an immigration officer that he had married the Beneficiary in order to allow her to remain in the United States, and that in exchange for his cooperation, he was paid a sum of money by her. He subsequently withdrew the immediate relative petition he had filed on her behalf. The Beneficiary and her counsel were sent notice of this statement by certified mail.

If unexplained or unrebutted, the record at the time of the NOIR's issuance would have warranted the petition's denial, as approval was barred by section 204(c) of the Act. The Director of the Vermont Service Center therefore properly issued the NOIR and properly revoked the petition's approval.

In addition, following the AAO's remand of the case, the Director of the Nebraska Service Center sent another NOIR. Good and sufficient cause supported the issuance of that notice, as the record contained substantial and probative evidence that the Beneficiary's former marriage was entered for the purpose of evading the immigration laws. Therefore, the Director of the Nebraska Service Center also properly issued the notice.

C. Section 204(c) of the Act

Section 204(c) of the Act, which governs the procedures for granting immigrant status, states that:

> Notwithstanding the provisions of subsection (b)[2] no petition shall be approved if
>
> (1) the alien 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 an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or
> (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(l)(ii), states:

> Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

In *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990), the Board of Immigration Appeals held that visa revocation pursuant to section 204(c) may only be sustained if there is substantial and probative evidence in the record of proceeding to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. *Id.* at 167. If substantial and probative evidence of marriage fraud exists, a petitioner must show by a preponderance of evidence that a beneficiary did not marry for the purpose of evading immigration laws. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). The central question in determining the *bona fides* of a marriage is whether the parties intended to establish a life together at the time of their marriage. *Laureano*, 19 I&N Dec. at 3; *see also Lutwak v. United States*, 344 U.S. 604, 611 (1953).

In the instant case, the Beneficiary entered the United States on December 9, 1995, in nonimmigrant visitor status. She married a U.S. citizen, , on 1997, in Maryland. On October 16, 1997, Mr. filed a Form I-130, Petition for Alien Relative,

[2] Subsection (b) of section 204 of the Act refers to preference visa petitions that are verified as true and forwarded to the U.S. Department of State for issuance of a visa.

on behalf of the Beneficiary.[3] *See* section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i) (defining the term "immediate relatives" to include spouses of U.S. citizens).[4] The couple attended an interview on [redacted] 1998, at the former Immigration and Naturalization Service (INS) office in Philadelphia, PA, with former counsel.[5] As noted by the Director in his decision, there were several discrepancies in the interview testimony, including the identity of the persons who attended the wedding ceremony and sent congratulatory wedding cards, as further detailed below; how Mr. [redacted] family learned of the marriage; the Beneficiary's state of knowledge about Mr. [redacted] military service; and the lack of knowledge of the marriage on the part of relatives of Mr. [redacted]

More specifically, the record contains copies of several greeting cards purportedly given to the Beneficiary and Mr. [redacted] upon their marriage. During the interview, the Beneficiary and Mr. [redacted] gave conflicting answers about the identities of the senders of the cards. One sender was identified by the Beneficiary as the daughter of their landlord (who lived in the house where they purportedly resided), and Mr. [redacted] identified the sender as a distant relative of the Beneficiary who he had never met. Another sender was identified by the Beneficiary as long-term friend from Sierra Leone, while Mr. [redacted] identified the sender as his manager at his place of employment. Yet another sender (a couple) was identified by the Beneficiary as her aunt and uncle that live in New Jersey, while Mr. [redacted] identified the sender as his brother-in-law from Sierra Leone, a man he has never met. Further, the Beneficiary and Mr. [redacted] gave conflicting answers regarding the attendees at their wedding ceremony. Mr. [redacted] indicated that their landlord, and their landlord's niece and her cousin, attended the wedding. The Beneficiary indicated that her aunt and uncle from New Jersey, and her friend from Sierra Leone [redacted] and his family and friends, attended the wedding.

The record contains an affidavit dated May 4, 1999, handwritten by Mr. [redacted] It states that he never resided with the Beneficiary; that he married the Beneficiary in order to allow her to remain in the United States; that in exchange for his cooperation, he was offered $2000 by the Beneficiary and paid a total of $1500 by her; and that he requested permission to voluntarily withdraw the Form I-130 petition. The request for permission to withdraw the Form I-130 petition was granted. The record contains a notice of acknowledgment of withdrawal dated June 10, 1999, which was mailed to Mr. [redacted] and his counsel, and restated his sworn testimony from the May 4, 1999, affidavit. The Beneficiary and her counsel received certified notice of the adverse decision based on Mr. [redacted] testimony.

On appeal, the Petitioner submits no new evidence and restates assertions made in its prior appeal, all of which were addressed by the Nebraska Service Center Director in his decision. Relating to the issue of marriage fraud, the Petitioner states on appeal that the record contains a sworn statement

[3] The record indicates that the Beneficiary filed for divorce from Mr. [redacted] in 2001.

[4] The Beneficiary concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, with the Form I-130 petition.

[5] The record contains two letters dated November 10, 1998, and February 16, 1999, from former counsel to the Beneficiary and Mr. [redacted] Counsel indicated that he was aware an investigation was being conducted into the *bona fides* of the marriage following their interview, and that he would provide additional evidence. By letter dated March 9, 1999, he submitted additional documentation to support the case.

from Mr. [redacted] dated September 10, 1998, indicating that his marriage to the Beneficiary was legitimate; that it contains a handwritten statement of the Beneficiary dated February 12, 2008, indicating that she spoke with Mr. [redacted] and he was pressured by the immigration officer to make a false statement and he regretted it; that [redacted] indicated in an affidavit that he sub-let a bedroom from the Beneficiary and Mr. [redacted], which the Petitioner asserts refutes the assertion that the couple never lived together; that Mr. [redacted] received his tax documents and other correspondence at the address where the couple resided together; that pursuant to a letter from [redacted] the couple met with an insurance agent to discuss their insurance needs; and that the resulting insurance policy purchased by the Beneficiary named Mr. [redacted] as the beneficiary.

The Petitioner further asserts on appeal that it submitted evidence that the Beneficiary and Mr. [redacted] married in good faith, including leases, utility bills, joint bank statements, and receipts for furniture purchases.[6] In his decision, the Director of the Nebraska Service Center significantly detailed the evidence in the record, including:

- Affidavit of the Beneficiary dated January 31, 2008, stating that "my marriage was real." The Director stated that the Beneficiary did not refute or materially contradict the facts in the sworn statement of Mr. [redacted] (which were made known to the Beneficiary through the denial decision of her prior Form I-485 on June 10, 1999);
- One page unsigned writing to the Beneficiary's counsel dated February 12, 2008, indicating that the writer spoke with Mr. [redacted] and he felt pressured by the immigration officer to make a false statement and he regretted it. The Director noted that this writing, purportedly written by the Beneficiary, carries little evidentiary weight because it is not an affidavit and is not signed;
- Affidavit of Mr. [redacted] dated September 10, 1998, attempting to explain the discrepancies in the visa interview. The Director noted the existence of two contradictory statements from Mr. [redacted] and indicated that the May 4, 1999, statement is more credible because it is a statement tending to go against the affiant's pecuniary and penal interests.[7] Further, the Director stated that the credibility of the 1999 statement is bolstered by the contemporaneous voluntary withdrawal of the Form I-130, which is consistent with the 1999 statement. Also, the record contains no additional communications regarding the withdrawn Form I-130 from Mr. [redacted] following the issuance of the Acknowledgement of Withdrawal notice dated June 10, 1999;
- Affidavit of [redacted] dated September 10, 1998, stating that he and his wife have sub-rented a bedroom in their house to the Beneficiary and Mr. [redacted] since August 1, 1997. He states that he knows the Beneficiary "as a family friend" and that the marriage "is a real

[6] Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences together. *Matter of Phillis*, 15 I&N Dec. at 387.

[7] The Petitioner must resolve the inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

and valid one." The Director noted that the affidavit indicates a different start date than the date listed in the lease agreement, and that it does not state that the Beneficiary and Mr. cohabitated together as spouses at the location of the lease. Further, the Director noted that Mr. was more likely than not a witness to the payment of money by the Beneficiary to Mr. in exchange for marrying her;

- Partial lease agreement for one bedroom located at PA, beginning August 10, 1997, and expiring September 9, 1997 (with a month-to-month renewal term), between " " and "
- Envelope with postmark dated January 21, 2000, addressed to Mr. at the address;
- Letter from insurance dated May 31, 1998, addressed to Mr. & Mrs. at the address, together with a $25,000 life insurance policy dated July 20, 1998, naming the Beneficiary as insured and Mr. as beneficiary;
- Automobile insurance policy issued by to the Beneficiary, valid from February 19, 1999, to August 19, 1999. Mr. is named as a driver of the vehicle;
- Partial lease agreement beginning February 1, 1999, and ending January 31, 2000, for property located at PA, between and , with listed as a resident;
- Furniture store invoices dated January 30, 1999, addressed to the Beneficiary and Mr.
- Furniture store invoice dated February 13, 1999;
- Cable invoice from addressed to the Beneficiary and Mr. (the date and address are illegible);
- Envelope from addressed to Mr. at the address;
- Statement/check from to Mr. at the address dated January 23, 2002;
- Undated letter from to Mr. at the address;
- Statements from dated December 1998, January 1999, and February 1999, addressed to the Beneficiary and Mr. at the address;
- Statements from dated January 1998 to May 1998, addressed to the Beneficiary and Mr. at the address;
- Payment coupon to a cable company addressed to the Beneficiary and Mr. at the address;
- Energy bill from dated October 14, 1999, addressed to the Beneficiary and Mr. at the address;
- Record change form for account dated February 11, 1999, changing Mr. address from the address to the address. The Beneficiary's name is not listed on the form; and

[8] According to the affidavit of Mr. in the record, his first name is spelled " " His name is spelled incorrectly on the lease.

- Invoice from surplus store dated June 2, 1998, addressed to the Beneficiary and Mr. at the address.

Regarding the joint purchase receipts, notices from suppliers or service providers, and copies of joint bank statements, the Director stated that the joint bank statements indicate some activity over a short period of time, but not a lot of activity over a long period of time as asserted by the Petitioner. We note that the record contains receipts for rents purportedly paid by the Beneficiary and Mr. at the PA address from 1997 through June 1998. While the receipts do not indicate how the rents were paid, the checking account statements in the record do not show that any corresponding rent checks were written on that account, or that cash was withdrawn from the account for those payments. For example, a receipt shows rent of $200 was paid on May 2, 1998. However, the checking account statement for the period dated April 27, 1998, to May 14, 1998, shows no cash withdrawals and no checks written in the amount of $200 during that period.

The furniture receipts, the Director noted, indicated that the couple purchase furniture, but do not demonstrate that they lived together in the residence as spouses in a *bona fide* marriage. The Director further stated that Mr. was encountered living at a different residential address with his girlfriend and her children not long after the January 1999 furniture purchase and bank change of address form.

The Director noted that the although the insurance documents were relevant and credible evidence of the existence of insurance coverage, they are assigned only moderate probative value because they came into existence well after the parties' marriage on 1997, and only after the parties' "problematic interview(s) at the Philadelphia INS office, where questions arose about the *bona fides* of the marriage." Significantly, the record contains no evidence of the courtship of the Beneficiary and Mr. or shared personal experiences of the couple.

The Petitioner has not established by a preponderance of the evidence that the marriage was *bona fide*. As noted by the Director, evidence in the record indicating that the marriage was not *bona fide* includes: interview discrepancies relating to the identity of the persons who attended the wedding ceremony, how Mr. family learned of the marriage, the Beneficiary's lack of knowledge about Mr. military service; the lack of knowledge of the marriage on the part of relatives of Mr. , Mr. presence at a different address than the claimed marital address with his girlfriend (not the Beneficiary) and her children; the affidavit of Mr. that the Beneficiary paid him to enter into the marriage and that he had never resided with the Beneficiary, which the Beneficiary had notice of based on her adjustment application denial; Mr. withdrawal of the Form I-130; and the Beneficiary's failure to declare on her employment-based Form I-485 that she had previously applied for permanent residence.[9]

[9] On the Beneficiary's Form I-485 filed on April 17, 2006, she indicated at Part 3.A. that she had never applied for permanent residence in the United States. The Form I-485 was denied on April 28, 2008, following the revocation of the approval of the Petitioner's Form I-140 on her behalf.

Our *de novo* review of the record establishes that substantial and probative evidence in the record demonstrates that the Beneficiary entered a marriage for the purpose of evading the immigration laws. The Petitioner has not shown by a preponderance of evidence that the marriage was *bona fide*. Approval of the Form I-140 petition is therefore barred by section 204(c) of the Act.

D. Beneficiary Qualifications

Although not addressed by the Director, we independently note that, even if the Petitioner had established that the petition's approval was not barred by section 204(c) of the Act, the record does not establish that the Beneficiary possesses the required education for the position.

A petitioner must establish the elements for the approval of the petition at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. §§ 204.5(g)(2), 103.2(b)(l), (12); *see also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The priority date in this case is July 24, 2002. In the instant case, the labor certification states the minimum requirements for the offered position are eight years of grade school and four years of high school. There are no training or experience requirements for the position.

On the labor certification, the Beneficiary indicated that she attended [redacted] in [redacted], Sierra Leone, from September 1974 to June 1980, and received her high school diploma. However, the record contains no evidence of the Beneficiary's education, such as copies of transcripts or diplomas. Accordingly, the Petitioner has not established that the Beneficiary possessed the education required by the labor certification.

II. CONCLUSION

In summary, the record at the time of the revocation of the petition's approval established that the Beneficiary married Mr. [redacted] in an attempt to evade the immigration laws. According, section 204(c) of the Act bars approval of the Petitioner's Form I-140 petition on behalf of the Beneficiary. The record also does not establish the Beneficiary's possession of the required education by the petition's priority date.

ORDER: The appeal is dismissed.

Cite as *Matter of P- Corp.*, ID# 270058 (AAO June 22, 2017)