U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8282470

Date: MAY. 1, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Skilled Worker

The Petitioner seeks to employ the Beneficiary as a chef specializing in Pakistani cuisine.[1] The company requests his classification under the third-preference, immigrant category for skilled workers. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1153(b)(3)(A)(i).

The Director of the Nebraska Service Center denied the petition. The Director found that the Beneficiary previously married to evade U.S. immigration laws, barring the petition's approval.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. EMPLOYMENT-BASED IMMIGRATION

Immigration as a skilled worker generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain DOL certification. *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for an offered position. *Id.* Labor certification also indicates that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS determines whether a beneficiary meets the requirements of a DOL-certified position and a requested visa classification. If USCIS grants a petition, a foreign national may finally 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.

[1] The Form I-140 states the title of the offered position as "Specialty Cook." The accompanying labor certification from the U.S. Department of Labor (DOL) identifies the position as "Specialty Chef."

II. THE MARRIAGE FRAUD BAR

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); *Matter of P. Singh*, 27 I&N Dec. at 602.

Here, the Director issued a written notice of intent to deny (NOID) the petition, informing the Petitioner of the Beneficiary's prior marriage to a U.S. citizen. As the NOID notes, the Beneficiary's former spouse petitioned for him to obtain lawful permanent resident status as her "immediate relative." *See* section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i) (exempting close relatives of U.S. citizens from numerical limitations on immigrant visas). While the marriage petition was pending, immigration officials received a letter from a third party asserting that the Beneficiary's spouse was paid to marry him for immigration purposes. The Beneficiary's spouse later attested before immigration officers that she received money to marry the Beneficiary and to accompany him to an interview on the petition at an immigration service office. The record contains a copy of the spouse's sworn statement, indicating that, contrary to the information in her petition, she never lived with the Beneficiary. USCIS ultimately denied the I-130 petition, finding that the couple had a fraudulent marriage.

After receiving the Petitioner's NOID response, the Director reviewed the record and found substantial and probative evidence that the Beneficiary married to evade immigration laws. The Director therefore concluded that section 204(c) of the Act barred the petition's approval.

Two weeks after the Director's decision, the Board of Immigration Appeals (BIA) issued *Singh*. *Singh* clarifies that substantial and probative evidence of marriage fraud, which triggers the bar to a petition's approval under section 204(c) of the Act, means evidence establishing "that it is more than probably true that the marriage [was] fraudulent." *Matter of P. Singh*, 27 I&N Dec. at 607. The requisite degree of proof is lower than clear and convincing evidence, but higher than a preponderance of evidence, the normal standard of proof in petition proceedings. *Id.*

Because *Singh* is a precedent decision, all USCIS officers must follow it in proceedings involving the marriage fraud bar. *See* 8 C.F.R. § 103.10(b). The Director applied the bar to this petition without benefit of *Singh*'s guidance. We will therefore withdraw the Director's decision and remand the matter.

On remand, the Director should review the record. If, pursuant to *Singh*, the Director finds evidence establishing that the Beneficiary "more than probably" engaged in marriage fraud, she should notify the Petitioner and explain how the evidence meets the standard of proof.[2]

[2] To clarify, 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

III. THE BENEFICIARY'S TRAINING

It is unclear whether the Director denied the petition based on the Beneficiary's training. The decision finds insufficient evidence of the Beneficiary's possession of the minimum training required for the offered position or the requested visa classification. But the decision also states that the petition was "not necessarily denied for these reasons."[3]

On remand, the Director should notify the Petitioner that it has not demonstrated the Beneficiary's satisfaction of the training requirements of the offered position and the requested visa classification. A skilled worker must perform "skilled labor (requiring at least 2 years training or experience)." Section 203(b)(3)(A)(i) of the Act; 8 C.F.R. § 204.5(l)(2) (defining the term "skilled worker"). A petitioner must also demonstrate a beneficiary's possession of all DOL-certified job requirements of an offered position by a petition's priority date.[4] *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS must examine the job-offer portion of an accompanying labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany* v. *Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the accompanying labor certification states that the offered position of specialty chef requires neither education nor experience. But the labor certification states that the position requires at least two years of training in "Pakistani food preparation."

As proof of training, a petitioner must submit letters from a beneficiary's trainers. 8 C.F.R. § 204.5(l)(3)(ii)(A). The letters must include the names, addresses, and titles of the trainers, and descriptions of the training received. *Id.*

The Petitioner submitted a letter from the former head chef of a restaurant in Pakistan, stating that he trained the Beneficiary in Pakistani food preparation at the restaurant from January 1994 until spring 1995. Contrary to 8 C.F.R. § 204.5(l)(3)(ii)(A), however, the letter does not state the signatory's current title with the restaurant. Also, the stated training falls short of the two-year period required by the offered position and the requested visa classification. In addition, the Petitioner submitted an inconsistent letter from the same restaurant, signed by the same former head chef. The second letter indicates the restaurant's employment of the Beneficiary as head chef from January 1994 to May 1996 without stating the Beneficiary's purported training. Also, on a Form G-325A, Biographic Information, supporting the Beneficiary's application for adjustment of status as the spouse of a U.S. citizen, he stated that he worked as a "businessman" at a "tractor showroom" in Pakistan from 1990

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petitioner must generally rebut that derogatory information by the same preponderance-of-evidence standard. *Matter of P. Singh*, 27 I&N Dec. at 606. If, however, USCIS denies 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.

[3] The Petitioner did not address the Beneficiary's training on appeal, suggesting that it did not believe the issue to be a ground of denial.

[4] This petition's priority date is August 9, 2017, the date DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

to 1996. The discrepancies cast doubt on the Beneficiary's claimed training. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record with independent, objective evidence pointing to where the truth lies).

The Petitioner submitted experience letters on behalf of the Beneficiary from other restaurants. These letters, however, do not indicate the Beneficiary's receipt of training. The record also contains food service management certificates in the Beneficiary's name. The certificates indicate that the Beneficiary passed examinations, but they do not state that he received training in Pakistani food preparation. Thus, the Petitioner has not demonstrated the Beneficiary's possession of the training required for the offered position and the requested visa classification.

On remand, the Director should inform the Petitioner of the evidentiary deficiency. The Director should ask the company to submit independent, objective evidence of the Beneficiary's claimed training and to explain why the second letter from the Pakistani restaurant omitted his purported training. The Petitioner must also submit independent, objective evidence to overcome the inconsistent experience listed on Form G-325 during the same time period claimed for training. The Director may also notify the Petitioner of additional, potential grounds of denial if supported by the record.

The Director should afford the Petitioner a reasonable opportunity to respond to all issues on remand. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

IV. CONCLUSION

The Director applied the marriage fraud bar without benefit of the BIA's most recent guidance on the subject. Also, the Petitioner has not demonstrated the Beneficiary's possession of the minimum training required for the offered position and the requested visa classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.