U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 06364726

Date: OCT. 2, 2020

Appeal of Immigrant Investor Program Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

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). This fifth preference (EB-5) classification makes immigrant visas available to foreign nationals 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.

The Chief of the Immigrant Investor Program Office initially approved the petition, but subsequently issued a notice of intent to revoke (NOIR) the approval based on government records that indicated the Petitioner had previously attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. After reviewing the NOIR response, the Chief revoked the approval, concluding that USICS was not permitted to approve the petition due to a finding that the Petitioner was subject to the INA §204(c) fraudulent marriage prohibition. The Petitioner appeals, submitting additional documentation and denies having entered into a marriage for the purpose of evading the immigration laws.

In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, its eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[1] Upon *de novo* review, we will withdraw the Chief's decision and remand the petition for further action and consideration.

I. LAW

The Act provides that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition . . . ." Section 205 of the Act, 8 U.S.C. § 1155. The Board of Immigration Appeals has discussed revocations on notice, stating:

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

> [A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA 1987)).

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states:

> Notwithstanding the provisions of subsection (b) 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.

U.S. Citizenship and Immigration Services (USCIS) cannot approve a petition if an individual previously married in an attempt to evade immigration laws. Section 204(c) of the Act, 8 U.S.C. § 1154(c). To invoke section 204(c) of the Act, the record must contain "substantial and probative" evidence of marriage fraud. 8 C.F.R. § 204.2(a)(1)(ii); *Matter of Tawfik*, 20 I&N Dec. 166, 167 (BIA 1990).

A petitioner has the initial burden to prove the bona fides of a marriage by a preponderance of the evidence. *Matter of P. Singh*, 27 I&N Dec. 598, 605 (BIA 2019). When the record contains evidence of fraud, USCIS must advise the petitioner, and the burden shifts to the petitioner to rebut the finding of fraud and establish that the prior marriage was not entered into for the purpose of evading the immigration laws. *Id.* at 605. The ultimate determination "is whether the parties 'intended to establish a life together at the time they were married.'" *See id.* at 601 (citing *Matter of Laureano*, 19 I&N Dec. 1, 2 (BIA 1983)).

For USCIS to deny a petition based on marriage fraud, the record must contain substantial and probative evidence of such fraud. *See id.* at 605-6 (citing *Saleh v. Holder*, 54 F. Supp. 3d 1163, 1169 (D. Nev. 2014)). The "substantive and probative evidence" standard of proof means that the evidence establishes "that it is more than probably true that the marriage is fraudulent." *See id.* at 607 (explaining that this standard is "higher than a preponderance of the evidence and closer to clear and convincing evidence").

II. ANALYSIS

In this case, the Petitioner filed the petition in April 2014, which the Chief approved in August 2016. The Chief issued a NOIR on July 27, 2017, indicating she had good and sufficient cause to revoke the

petition as it had been approved in error. Specifically, the Chief concluded "Service records indicate that [the] Petitioner, a national of China, admitted to United States Government officials that in the year 2000, she entered into a marriage to a United States Citizen for the sole purpose of evading the immigration laws" and the Chief had therefore been barred from approving the petition under Section 204(c) of the Act. In response to the NOIR, the Petitioner submitted evidence that she had entered into a bona fide marriage and denied ever having admitted she entered into a marriage to a U.S. citizen for the sole purpose of evading the immigration laws. The Chief then revoked the approved petition finding that the Petitioner's submitted documents did not overcome USCIS's formal finding of fraud or the Petitioner's previous admission of fraud and the petition was therefore subject to the bar under Section 204(c) of the Act.

The Chief's determination was made prior to the Board of Immigration Appeals decision in *Matter of P. Singh* which clarified the evidentiary requirements necessary to deny a visa petition based on a finding of a prior fraudulent marriage. We conclude that the derogatory evidence relating to the Petitioner's prior marriage to a U.S. citizen, when viewed in the context of the entire record, does not provide a degree of proof that is higher than a preponderance of the evidence to constitute the "substantial and probative" evidence of marriage fraud required to deny a visa petition under *Matter of P. Singh*. *See id.* at 607. Accordingly, we withdraw the Chief's determination that the Petitioner is barred under Section 204(c) of the Act and remand the matter for her to analyze the evidence to determine if it meets the requirements set out in *Matter of P. Singh*.

III. CONCLUSION

The appeal will be remanded to the Chief for further action in accordance with this decision.

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