U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13192185

Date: JUNE 6, 2023

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 noncitizens who invest the requisite amount of qualifying capital in a new commercial enterprise that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees. Noncitizens may invest in a project associated with a U.S. 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. § 1154(c), because the Petitioner sought the assistance from [redacted] and [redacted] to engage in a sham marriage with [redacted] solely for the purpose of obtaining an immigration benefit. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that the Chief has not provided substantial and probative evidence in his file to demonstrate that his prior marriage was entered into for the primary purpose of obtaining immigration benefits.

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). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 204(c) of the Act states in pertinent part:

> [N]o 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 at 8 C.F.R. § 204.2(a)(1) states:

> *(ii) Fraudulent marriage prohibition.* 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.

A petitioner must show by a preponderance of the evidence that the marriage was legally valid and bona fide at its inception and not entered into for the purpose of evading the immigration laws. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983). Where there is reason to doubt the validity of the marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the purpose of evading immigration law. *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). Evidence to establish intent could take many forms, including proof that the beneficiary has been listed as the petitioner's 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. *Matter of Laureano*, 19 I&N Dec. at 3

A marriage that is entered into for the primary purpose of circumventing the immigration laws, referred to as a fraudulent or sham marriage, has not been recognized as enabling a noncitizen spouse to obtain immigration benefits. *Matter of Laureano*, 19 I&N Dec. at 2. The central question in determining whether a sham marriage exists is whether the bride and groom intended to establish a life together at the time they were married. *Id.* at 2-3.

In deciding if a marriage is a sham, USCIS must examine the record to determine if there is substantial and probative evidence of fraud to warrant the denial of a visa petition under section 204(c) of the Act. 8 C.F.R. § 204.2(a)(1)(ii); *Matter of P. Singh*, 27 I&N Dec. 598, 602 (BIA 2019). To be "substantial and probative," the evidence must establish that it is more than probably true that the marriage is fraudulent. *Id.* at 607. The requisite degree of proof is higher than a preponderance of evidence but less than clear and convincing evidence, which the Board of Immigration Appeals refers to as "more than probably true." *Id.* The application of the substantial and probative evidence standard requires the examination of all of the relevant evidence and a determination as to whether such evidence, when viewed in its totality, establishes with sufficient probability that the marriage is fraudulent. *Id.*

In making the section 204(c) adjudication, USCIS may rely on any relevant evidence, including evidence having its origin in prior USCIS proceedings involving the beneficiary or in court proceedings involving in the prior marriages. *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990). Ordinarily, USCIS should not give conclusive effect to determinations made in a prior proceeding but, rather, should reach its own independent conclusion based on the evidence before it. *Id.*

II. ANALYSIS

The Petitioner indicated on page 6 of his petition that on September 7, 2017, he invested $500,000[1] in [redacted], the new commercial enterprise (NCE), which is associated with [redacted] pursuant to the Immigrant Investor Pilot Program. According to the Private Placement Offering Memorandum of the NCE, the NCE proposed to pool $50,000,000 from 100 immigrant investors and invest in [redacted] the job-creating entity (JCE). The business plan of the JCE indicates that the JCE intends to develop, own, and operate [redacted] a 300-unit rental apartment community, in [redacted] Florida.

In [redacted] 2010, the Petitioner and [redacted] were married in [redacted] California. In October 2010, [redacted] filed a Form I-130, Petitioner for Alien Relative, on behalf of the Petitioner. The Petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On February 15, 2011, the Petitioner appeared before an officer in the Los Angeles Field Office and requested to withdraw his Form I-485. The Petitioner presented his Florida driver's license, listing [redacted] as his current address. This Florida address is different from the address of the claimed marital residence of the Petitioner and [redacted] at that time. On February 17, 2011, [redacted] and the Petitioner failed to appear for their scheduled interview, and both Form I-485 and Form I-130 were denied.

On his Form I-485 and Form G-325, Biographic Information, both of which he signed under penalty of perjury on October 18, 2020, the Petitioner indicated that he was residing at [redacted] California, since September 2010. On her Form I-130 and Form G-325, both of which she signed under penalty of perjury on October 18, 2020, [redacted] indicated that she was residing at [redacted] California, since September 2010.

The Chief found that the Petitioner previously sought the assistance from [redacted] to engage in a sham marriage with [redacted] solely for the purpose of obtaining an immigration benefit and determined that approval of the Form I-526 is prohibited under section 204(c) of the Act.

On appeal, the Petitioner contends that the Chief has not provided substantial and probative evidence in his file to demonstrate that his prior marriage was entered into for the primary purpose of obtaining immigration benefits. The Petitioner further contends that the only evidence presented by the Chief includes the misuse of a mailbox address and unrelated convictions of individuals involved in an apparent fraudulent marriage scheme.

As a result of a multi-year investigation conducted by the Department of Homeland Security, U.S. Immigration and Customs Enforcement, Homeland Security Investigations (HSI), on September 22, 2015, [redacted] (also known as [redacted]), his daughter, [redacted] (also

[1] On March 15, 2022, President Joe Biden signed the EB-5 Reform and Integrity Act of 2022, which made significant amendments to the EB-5 program, including the designation of a targeted employment area (TEA) and the minimum investment amounts. *See* section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). In this case, the Petitioner filed his petition in 2017 and indicated that the project is located in a TEA. Therefore, the requisite amount of qualifying capital was downwardly adjusted from $1,000,000 to $500,000. *See* 8 C.F.R. § 204.6(f)(2) (2015).

known as [redacted], and another co-conspirator, [redacted] were indicted in the United States District Court for the Central District of California on a 20-count grand jury indictment for violations of 18 U.S.C. § 371 (Conspiracy to Commit Visa Fraud and Marriage Fraud), 18 U.S.C. § 1546 (Fraud and Misuse of Visas, Permits, and Other Documents), 18 U.S.C. § 1325 (Marriage Fraud), 18 U.S.C. § 1324 (Encouraging Illegal Residence for Private Financial Gains), 18 U.S.C. § 2 (Causing an Act to be Done), and 18 U.S.C. § 982, 28 U.S.C. § 2461, and 8 U.S.C. § 1324 (Criminal Forfeiture). The HSI investigation revealed that [redacted] were arranging fraudulent marriages between foreign nationals and U.S. citizens in exchange for a substantial fee paid by the foreign nationals to attempt to obtain legal immigration status in the United States. The Petitioner was identified as a beneficiary of a sham marriage arranged by [redacted]

On [redacted] 2017, [redacted] pled guilty and was convicted of 18 U.S.C. § 371 (Conspiracy to Commit Visa Fraud and Marriage Fraud) and was committed to the custody of the Bureau of Prisons to be imprisoned for 24 months and ordered to pay a special assessment. On [redacted] 2017, [redacted] pled guilty and was convicted of 18 U.S.C. § 371 (Conspiracy to Commit Visa Fraud and Marriage Fraud) and was committed to the custody of the Bureau of Prisons to be imprisoned for six months and ordered to pay a special assessment, a fine, and her attorney's fees.

The Petitioner claims that the mere existence of a mailbox address alone is not probative evidence that he and [redacted] did not reside together at a given point in time and that the Chief has not identified any additional evidence to confirm that he and [redacted] did not reside or share a life together as husband and wife throughout the duration of their marriage.

During the HSI investigation, it was revealed that [redacted] California, was an address associated with the marriage fraud conspiracy under the control of [redacted] and [redacted] HSI Special Agents reviewed suspected fraudulent immigration applications and petitions submitted to USCIS and identified multiple addresses in common, with all of those addresses involving properties or mailboxes rented or owned by [redacted] or their conspirators. The address of the claimed marital residence of the Petitioner and [redacted] California) was one of these common addresses.

While the Petitioner claims that the mere existence of a mailbox address is not probative evidence that he and [redacted] did not reside together, the Petitioner does not provide any explanation as to why the address under the control of [redacted] was used by him and [redacted] as the address of their claimed marital residence. The Petitioner does not provide any evidence to show that he and [redacted] were actually living together as husband and wife at [redacted] California, or at any other addresses.

The Petitioner also claims that the Chief failed to provide any substantial evidence identifying how his case was substantially related to the fraudulent marriage scheme perpetrated by [redacted] to such a capacity as to attribute personal intent or guilt to his person and marriage; that there is no evidence of his admitting to such fraud; that there is no evidence that [redacted] received payment from him for entering into the marriage; that his marriage was not included in the federal case against third parties in California; and that there exists no written decisions by a court or an agency finding that his former marriage to [redacted] was substantially involved in any fraudulent scheme.

The contention that the Chief failed to provide substantial evidence identifying how his case was substantially related to the fraudulent marriage scheme perpetrated by [redacted] is demonstrably untrue. The Chief clearly stated that the HSI investigation revealed that the Petitioner and [redacted] never resided together as husband and wife, that their residential addresses listed on Form I-130 and Form I-485 are associated with [redacted] marriage fraud scheme, and that the Petitioner and [redacted] were living at different places and never resided together as husband and wife. Furthermore, the Petitioner acknowledges that he is associated with [redacted][2]

A sworn statement by the parties admitting that the marriage is fraudulent, that money changed hands, and that the couple did not intend to live together or consummate the marriage is direct evidence of fraud that is substantial and probative. *Matter of P. Singh*, 27 I&N Dec. at 607. However, an admission or other such direct evidence is not necessary to establish marriage fraud. *Id.* at 608. Courts have found that circumstantial evidence alone is sufficient to establish fraud under section 204(c). For example, in *Dinh v. United States*, 670 F.App'x 505, 506 (9th Cir. 2016), the United States Court of Appeals for the Ninth Circuit found substantial and probative evidence of marriage fraud where the couple first met on the day of the wedding, which was arranged by a broker; the beneficiary left the State on the day of the wedding and never saw her spouse again; and the beneficiary was not mentioned on any joint bank accounts, insurance, or lease.

In the present case, in support of her Form I-130 filed on behalf of the Petitioner, [redacted] submitted a copy of a warranty deed for a real property in [redacted] County, Florida, and copies of certificates of title for two motor vehicles registered in [redacted] Florida. The deed and motor vehicle titles list the Petitioner as the sole owner of the real property in Florida and two motor vehicles registered in Florida. [redacted] was not mentioned on any of these documents. Moreover, the Petitioner and [redacted] knowingly and deliberately attempted to mislead or deceive immigration officials regarding their cohabitation by claiming in their Form I-130, Form I-485, and Forms G-325 that they were residing together at [redacted] California, when in fact they were not. Furthermore, during the HSI investigation, the Petitioner was identified as a beneficiary of a sham marriage arranged by [redacted] The record contains substantial and probative evidence of marriage fraud by the Petitioner. As such, the record supports the Chief's determination that approval of the Form I-526 is barred under section 204(c) of the Act. In addition, it is not necessary that the noncitizen has been convicted of, or even prosecuted for, the attempt or conspiracy to enter into a fraudulent marriage. *See* 8 C.F.R. § 204.2(a)(1)(ii).

The Petitioner asserts that he and [redacted] entered into a bona fide marriage and that the Form I-130 was filed with all necessary documents to prove that their marriage was bona fide. The Petitioner also asserts that when he was no longer eligible for an immigration benefit due to the imminent termination of his marriage, he withdrew his Form I-485, providing USCIS with evidence of his intent to comply with immigration statutes and not to commit fraud.

[2] On page 7 of his brief in support of the instant appeal, the Petitioner states: "The Service's reasoning effectively amounts to a bar on [redacted] I-526 application based on his mere association to [redacted]

In support of the instant appeal, the Petitioner submits a brief prepared by his attorney in which the attorney claims that the Petitioner and [redacted] entered into a bona fide marriage. However, the Petitioner does not submit his affidavit, an affidavit from [redacted] or any other evidence to support this claim. Mere assertions of counsel without documentary support do not constitute evidence. *See INS* v. *Phinpathya*, 464 U.S. 183, 188 n.6 (1984); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, even if the Petitioner submits an affidavit, affidavits alone will generally not be sufficient to overcome evidence of marriage fraud in the record without objective documentary evidence to corroborate the assertions made by the affiants. 8 C.F.R. § 204.2(a)(i)(B)(5) (stating that affidavits should be supported, if possible, by one or more types of documentary evidence). Here, the record does not contain objective documentary evidence to corroborate the assertations made by the attorney.

Additionally, the assertion that the Petitioner's withdrawal of his Form I-485 when he was no longer eligible for an immigration benefit due to the imminent termination of his marriage provides USCIS with evidence of his intent not to commit fraud is speculative and does not support the claim that his marriage is bona fide or that he and [redacted] intended to establish a life together as husband and wife at the time they were married. On appeal, the Petitioner submits no new evidence showing a joint life with [redacted] The Petitioner does not present new evidence to show that the marriage was not entered into for the purpose of evading the immigration laws.

The record contains substantial and probative evidence establishing the Petitioner's marriage to [redacted] was a sham. The Petitioner acknowledges his relationship with individuals convicted conspirators operating a marriage fraud ring. During the multi-year HSI investigation, the Petitioner was identified as being a beneficiary of their fraud, and he sought marriage-based immigration benefits by fraudulently claiming to reside at an address directly tied to the immigration fraud conspiracy. Upon de novo review, we find the totality of the record demonstrates with sufficient probability that the Petitioner's marriage to [redacted] was fraudulent. Therefore, we agree with the Chief's finding that approval of the instant visa petition is barred by section 204(c) of the Act.

In light of our discussion on the applicability of section 204(c) of the Act in this case, we need not consider whether the Petitioner has established his eligibility for the immigrant investor visa classification. Instead, we will reserve EB-5 eligibility issues for future consideration should the need arise.[3]

III. CONCLUSION

Having reviewed all of the relevant evidence in its totality, we conclude that there is substantial and probative evidence in the record to establish with sufficient probability that the Petitioner's prior marriage was fraudulent and entered into for the purpose of evading the immigration laws. Therefore, the Chief properly denied the Petitioner's Form I-526 pursuant to section 204(c) of the Act.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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 alternate issues on appeal where an applicant is otherwise ineligible).

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.