U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13906969

Date: JUNE 20, 2023

Appeal of California Service Center Decision

Form I-129F, Petition for Alien Fiancé(e)

The Director of the California Service Center denied the K-1 fiancé(e) petition that is before us today. The Director found that the Beneficiary married his prior spouse for the purpose of evading the immigration laws of the United States, and concluded that because of that behavior, the "marriage fraud bar" contained at section 204(c) of the Act, 8 U.S.C. § 1154(c), precludes approval of the petition. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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

The Petitioner seeks to classify the Beneficiary as her K-1 fiancé under section 101(a)(15)(K)(i) of the Act, a nonimmigrant visa classification. The Petitioner must establish that the couple met during the two-year period preceding the petition's filing, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within 90 days of admission. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1).

A fraudulent or "sham" marriage is one that was "entered into for the primary purpose of circumventing the immigration laws." *Matter of P. Singh*, 27 I&N Dec. 598, 601 (BIA 2019) (citing *Matter of Laureano*, 19 I&N Dec. 1, 2 (BIA 1983)). Section 204(c) of the Act bars the approval of a subsequent petition after a finding of marriage fraud, as follows:

> [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 . . . , by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, *or (2) the [Secretary of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws*.

(Emphasis added.)

For section 204(c) to apply, there must be substantial and probative evidence that a noncitizen married, attempted to marry, or conspired to marry for the purpose of evading the immigration laws. 8 C.F.R. § 204.2(a)(1)(ii); *Matter of Tawfik*, 20 I&N Dec. 166, 167-68 (BIA 1990) (stating that a "reasonable inference" of marriage fraud is insufficient to preclude the approval of a visa petition under section 204(c)). Substantial and probative evidence means more than a preponderance of the evidence, and both direct and circumstantial evidence may be considered. *Matter of P. Singh*, 27 I&N at 607-08. In some cases, circumstantial evidence alone may be sufficient to constitute substantial and probative evidence. *Id.* at 608.

II. ANALYSIS

The Petitioner filed this petition on the Beneficiary's behalf in February 2019. The Director issued a notice of intent to deny (NOID) the petition, notifying the Petitioner that the Beneficiary was not eligible for a K-1 visa because the Beneficiary had previously married a U.S. citizen for the sole purpose of obtaining immediate relative status. The Petitioner responded to the NOID claiming, among other things, that the Beneficiary's prior marriage was bona fide. After considering the record in its entirety, the Director found that it contained substantial and probative evidence that the Beneficiary's prior marriage was fraudulent. Relying on *Matter of C-Y-L*, 2017 WL 5260050 (AAO 2017), a non-precedent decision issued by our office, the Director concluded that the marriage fraud prohibition at section 204(c) barred the fiancé petition's approval.

On appeal, the Petitioner argues that the Director erred in relying solely on an AAO non-precedent decision in denying the fiancé petition. According to the Petitioner, section 204(c) of the Act, which is found under section 204, titled "Procedure for Granting Immigrant Status," does not apply to the K-1 visa program, a *nonimmigrant* classification under section 101 of the Act, 8 USC § 1101. The Petitioner contends Congress would have included a 204(c) equivalent for the K-1 visa if that was what it had intended. The Petitioner submits additional evidence on appeal to show that the Beneficiary's prior marriage was not entered into for the purpose of circumventing U.S. immigration law.

The petition will remain denied. As described below, we agree with the Director that section 204(c) of the Act may be applied to fiancé petitions, and we do not find that the new evidence submitted on appeal overcomes the finding of marriage fraud.

A. Section 204(c) of the Act Applies to K-1 Fiancé Petitions

We acknowledge that non-precedent decisions apply existing law and policy to the specific facts of an individual case, and only precedent decisions bind U.S. Citizenship and Immigration Services (USCIS) employees as they administer the Act. *See* 8 C.F.R. § 103.3(c). Nonetheless, while we discourage the citation of our nonprecedential decisions, we find no error with the Director's reliance on *Matter of C-Y-L*, which merely recited the applicable legal framework regarding whether the marriage fraud bar applies to fiancé petitions.

Even if we were to consider that citation to have been an error, intervening precedent would now bind us. *See* 8 C.F.R. § 103.10(b). The Board of Immigration Appeals (the Board) recently held that the marriage fraud bar is applicable to fiancé petitions. In *Matter of R. I. Ortega*, 28 I&N Dec. 9, 12 (BIA 2020) (citing *Matter of Sesay*, 25 I&N Dec. 431, 438-39 (BIA 2011)), the Board explained that because K-1 visa holders have a direct path to permanent status in the United States without having to file a Form I-130 immigrant visa petition, they are unlike most nonimmigrant visas and "have always been treated as the functional equivalents of immediate relatives for purposes of immigrant visa eligibility and availability." *Id.*

In reaching that conclusion, the Board rejected the argument that the entirety of section 204(c) does not apply to nonimmigrant visas, concluding that although section 204(c)(1) of the Act is limited to noncitizens who have been accorded, or sought to be accorded, an immigrant visa, the subsequent section 204(c)(2) plainly applies to K-1 fiancé visas:

> Under the plain language of the statute, an alien who has [attempted or] conspired to enter into a marriage for the purpose of evading the immigration laws by seeking to secure a K-1 fiancé(e) nonimmigrant visa is subject to the bar under section 204(c)(2) of the Act.

Matter of R.I. Ortega at 14. Therefore, section 204(c) may be applied to fiancé petitions regardless of their nonimmigrant classification. *Id.*

In addition, the Petitioner's argument that section 204(c) is inapplicable based on its placement under section 204, which is titled "Procedure for Granting Immigrant Status" is unpersuasive. As the Supreme Court has twice unanimously found, the heading of a statute is not necessarily determinative or descriptive of its applicability. *See Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 138 S.Ct. 883, 893 (2018) (citations omitted); *Bhd. of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947) (stating that "the heading of a section cannot limit the plain meaning of the text," and describing that headings and titles "are but tools available for the resolution of a doubt"). Although they may "supply clues" regarding Congress' intent, "section headings cannot limit the plain meaning of a statutory text." *Merit Mgmt. Grp., LP*, 138 S.Ct. at 893; *see also Matter of A-M-*, 25 I&N Dec. 66, 76 (BIA 2009) ("notwithstanding the heading of section 240A(b) of the Act, which only refers to nonpermanent residents, we find that lawful permanent residents may be eligible to apply for special rule cancellation of removal for battered spouses under section 240A(b)(2) of the Act").

The plain language of section 204(c)(2) of the Act attaches to K-1 fiancé(e) nonimmigrant visas, and as such, we do not find the title of section 204 to be determinative in limiting its applicability solely to immigrant visas.[1]

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[1] We acknowledge the INS Office of General Counsel's 1987 opinion advising our office that section 204(c) applies only to immigrant visa petitions, not nonimmigrant K-1 petitions. *See* Office of INS Gen. Counsel, U.S. Dep't of Justice, *Marriage Fraud Amendments: Interpretation of New Section 204(c)*, GenCo Op. No. 87-21 (April 2, 1987). Since the advice from this internal memo is now superseded by the Board's binding precedent, we will not apply its reasoning here. *See* section 103(a)(1) of the Act (providing that the "determination and ruling by the Attorney General with respect to all questions of law shall be controlling"); *see also Matter of E-L-H-*, 23 I&N Dec. 814, 825 (BIA 1998; A.G. 2004; BIA 2005) ("The Board speaks for the Attorney General in issuing precedent decisions."). And in any event, the INS General Counsel opinion is not binding on us. *See R.L. Inv. Ltd. Partners v. INS*, 273 F.3d 874 (9th Cir. 2001) (adopting the district court's

B. Substantial and Probative Evidence of Marriage Fraud

There is substantial and probative evidence that the Beneficiary entered his previous marriage to circumvent U.S. immigration laws. The record shows that the Beneficiary married his prior spouse, a U.S. citizen, in December 2014, and that an approved Form I-130, Petition for Alien Relative, filed on his behalf was subsequently revoked after the Beneficiary's immigrant visa interview at the U.S. Consulate in Addis Ababa, Ethiopia, in March 2017. The Consular Officer (CO) found, in part, that: the Beneficiary testified vaguely regarding his relationship to his prior spouse; the Beneficiary could not provide any substantive details regarding his prior spouse's life in the United States; the Beneficiary responded, in generic fashion, that his prior spouse liked to read books and travel to the city in which she was born (but did not name the city). Based on the interview, the Beneficiary's evidence, and the general lack of details and background information concerning his relationship and marriage to his prior spouse, the CO concluded that the marriage was not genuine and returned the petition to USCIS for revocation.

USCIS issued a notice of its intent to revoke (NOIR) the I-130 petition's approval in October 2018. The Beneficiary's prior spouse did not respond, and USCIS revoked the approval the following month. In its revocation decision, USCIS deemed the marriage as not genuine and entered solely for the purpose of evading the immigration laws of the United States.

Though its results were not yet known at the time of the I-130 revocation proceeding, USCIS conducted an investigation of government records during this fiancé petition's pendency. That investigation uncovered the fact that the Beneficiary is related to his prior spouse: he is the brother of his prior spouse's maternal grandmother. In other words, the Beneficiary is his prior spouse's great uncle. At no time during the pendency of the I-130 or at the Consular interview did the Beneficiary or his prior spouse reveal this fact to the U.S. government. In addition, USCIS discovered that, although the Beneficiary stated under oath that he had no relatives in the United States, both his former mother-in-law, who is his niece, and his former spouse, who is his great niece, were living in the United States at the time.

The Petitioner has not overcome the grounds for denial nor sufficiently explained the discrepancy regarding the Beneficiary's familial relationships on appeal. Though he provides additional details through the submission of an updated statement on appeal and affirms the bona fides of his prior marriage, several of the new details he provides conflict with what he told the CO. For example, he told the CO in 2017 that he and his prior spouse began their romantic relationship in 2010. In his updated statement, he now claims that although he and his prior spouse met in 2009, when he was working as her driver, she returned to the United States in 2010 and that they began their romantic relationship "five years later." We presume he means five years after they met, because he also claims that once they acknowledged their feelings for one another, his prior spouse returned to Ethiopia for a brief visit from December 14-20, 2014, during which time they married. Further, both the Beneficiary and his prior spouse, likewise through the submission of a statement, claim on appeal to have carried

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decision which found that "General Counsel opinions are advisory in nature and do not bind the INS"); *Matter of Izummi*, 22 I&N Dec. 169, 188 (Assoc. Comm'r 1998) (describing Office of the General Counsel memoranda as "internal Service memorandum" that are "merely opinions [and] as such, adjudicators are not bound by OGC recommendations").

on a five-year long-distance relationship. However, given the sequence of events, the record remains unclear when their romantic relationship began, as their statements on appeal are not consistent with those the Beneficiary provided the CO. In short, more than six years after the Beneficiary's immigrant visa interview, the record is still unclear on the basic fact of when their relationship began.

In similar fashion, the statements on appeal by the Beneficiary and his prior spouse regarding their December 2014 marriage ceremony, and their plans for a subsequent, larger ceremony, contribute uncertainty rather than clarity. As during his interview with the CO, the Beneficiary continues to be unable to describe how much time he and his prior spouse spent together during her December 14-20, 2014 stay in Ethiopia, a trip which included their marriage ceremony. The Beneficiary states only that this was because she was spending time with her family in Ethiopia, without further detail. We agree with the CO that this explanation is not sufficient.

The Beneficiary and his prior spouse's statements are consistent in that they both claim the December 2014 wedding ceremony was to be followed by a larger one to take place in the United States after his arrival. However, their claims otherwise present a series of questions that remain unanswered. For example, the Beneficiary claims to have spoken to his prior spouse's mother via telephone while they were planning the later, larger wedding. In light of his testimony to the CO that he did not have any family in the United States, the Beneficiary implies that he never realized he was speaking to his niece, and his niece never realized that she was speaking to her uncle, throughout these conversations.

The planning process for the later wedding ceremony is also in dispute. The Beneficiary claims on appeal that they started planning for a larger wedding ceremony, to take place in Ethiopia, after his immigrant visa was refused at the consulate in March 2017. The Beneficiary claims this ceremony was to take place in June 2017 and submits a wedding invitation. However, we observe that the invitation states that the ceremony would take place a month later, on July 23, 2017, at "1:00am in the day." By contrast, his prior spouse claims on appeal that they were planning for the larger wedding ceremony to take place in the United States until she received the "denial letter from immigration," and only at that point did they begin planning for the larger wedding ceremony to take place in Ethiopia. The I-130 revocation notice to which the Beneficiary's prior spouse presumably refers was issued in November 2018.

The disparity in planned wedding dates has not been addressed and the timelines cannot be reconciled. The Beneficiary claims that for a period of 20 months (March 2017 to November 2018) he and his former mother-in-law (also his niece) telephonically planned for a wedding; however, during this time neither realized the other was planning for it to occur in a different country.

Finally, we conclude that the information regarding the Beneficiary's divorce from his prior spouse raises yet more issues that further diminish the reliability of their statements. The record contains a copy of a "divorce certificate" issued in October 2018, which states that the Beneficiary and his prior spouse divorced in [redacted] 2017. These dates are problematic considering the statement of the Beneficiary's prior spouse who, as noted, indicated that as of November 2018 they were still planning for a second, larger wedding to take place. This inconsistency has not been explained.

The Beneficiary's statement regarding the divorce is also problematic considering the [redacted] 2017 divorce date specified on the divorce certificate. To properly consider why that is so, we take note of guidance from the U.S. Department of State (DOS) regarding the divorce process in Ethiopia:

> Most marriages in Ethiopia are religious in nature and sometimes customary. Nevertheless, a civil divorce procedure is mandatory for all divorces to be effective.
>
> Obtaining a divorce is a lengthy process in Ethiopia. Each party must have two appointed family arbiters, acceptable to the court. The first priority of the family arbiters is to attempt to reunite the husband and wife. If this is not possible, they will then negotiate agreements for property settlement and child custody. The arbiters must present the agreement to the court for a final decision. Upon presentation of the court's ruling and a copy of the judgments signed by all parties involved, the municipality will issue a Divorce Certificate in the Amharic language only.

U.S. Department of State, Bureau of Consular Affairs, U.S. Visa: Reciprocity and Civil Documents by Country: Ethiopia, *available at* https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Ethiopia.html.

According to DOS, the divorce process in Ethiopia is "lengthy" and involves at least four arbiters, and the process is "mandatory" for "all" divorces to be effective. However, the Beneficiary claims on appeal that he did not learn he is his prior spouse's great uncle until June 25, 2017, and that he did not speak to her for "a few months" because he was distraught over the revelation. He states that after the passage of those few months, he began speaking with his prior spouse, his family, and his friends, and that they decided to divorce "as soon as possible." He claims that he filed for the divorce, and that after it was finalized in [redacted] 2017, he sent his prior spouse "a copy for her record[s]." The Beneficiary's account of his divorce process does not align with the description of the Ethiopian divorce process laid out by DOS. He describes a process that was neither "lengthy" nor one that appears to have involved his prior spouse in any substantive way.[2]

We agree with the CO who refused the immigrant visa, and the Director who revoked the I-130's approval, that the record is not sufficient to establish the bona fides of the Beneficiary's prior marriage. The materials submitted on appeal do not cure that deficiency but instead raise additional, unresolved concerns. As it relates to the overall bona fides of the Beneficiary's marriage to his prior spouse, our independent review of the evidence leads us to conclude that there exists substantial and probative evidence in the record that the Beneficiary married her for the primary purpose of obtaining immigration benefits.

As there exists substantial and probative evidence in the record that the Beneficiary married his former spouse for the primary purpose of obtaining immigration benefits, we conclude that the provisions of section 204(c) of the Act have been triggered, barring the approval of the petition.

[2] We further observe that the document was issued in two languages (English and what we presume to be Amharic). However, DOS specifically states that the divorce decree will be issued "in the Amharic language only." U.S. Department of State, Bureau of Consular Affairs, U.S. Visa: Reciprocity and Civil Documents by Country: Ethiopia, *supra*.

III. CONCLUSION

As the record contains substantial and probative evidence that the Beneficiary married his former spouse for the primary purpose of obtaining immigration benefits, and the Petitioner has not submitted sufficient evidence to overcome that determination, we agree with the Director that the provisions of section 204(c) of the Act were triggered. We also agree with the Director that the K-1 visa classification does not allow a noncitizen who, as here, has committed marriage fraud for immigration benefits to escape the long-standing immigration bar found in section 204(c) of the Act. The appeal will therefore be dismissed, and the petition will remain denied.[3]

ORDER: The appeal is dismissed.

[3] Based on our conclusion regarding the applicability of section 204(c) of the Act, we will not address the merits of the underlying K-1 petition. We hereby reserve consideration of the Petitioner's burden to establish the Beneficiary's eligibility for the K-1 petition under section 214(d) of the Act, including the validity of the divorce decree the Beneficiary submits. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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 alternative issues on appeal where an applicant is otherwise ineligible).