U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35079045

Date: JAN. 24, 2025

Appeal of California Service Center Decision

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

The Petitioner, a U.S. citizen, seeks the Beneficiary's admission to the United States under the fiancé(e) visa classification. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i) (the "K-1" visa classification).

The Director of the California Service Center denied the petition, concluding that the Beneficiary married her prior spouse for the purpose of evading the immigration laws of the United States, and concluded that because of that, the "marriage fraud bar" 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 pursuant to 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

Section 214(d)(1) of the Act states in pertinent part:

> [A fiancé(e) petition] shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person . . . .

The marriage fraud bar has existed for 60 years. Enacted in 1961 and expanded twice, the current section 204(c) of the Act (the marriage fraud ban) bars approval of an immigrant petition filed on behalf of a non-citizen who has sought to evade U.S. immigration laws through a sham marriage. *See* section 101(a)(15) of the Act, supra (every non-citizen is an immigrant except those enumerated under

that subsection); *see also, e.g.*, section 101(a)(15)(B) of the Act (permitting temporary visitors for business or pleasure who have "a residence in a foreign country which [they have] no intention of abandoning"). Section 204(c) of the Act in its current form states in relevant 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 . . . , 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.)

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)). 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. *See* 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) of the Act). Substantial and probative evidence means more than a preponderance of the evidence, and both direct and circumstantial evidence may be considered. *See 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 October 2021. 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 ban applied to the fiancé petition and barred its approval.

On appeal, the Petitioner contends that the Director erred and advances several contentions in support. First, the Petitioner asserts the Director should not have relied on *Matter of C-Y-L* because it is a nonprecedent decision that incorrectly determined the marriage fraud ban applies to the nonimmigrant fiancé(e) visa classification. 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 that Congress's intent is unambiguous, and that the marriage fraud ban was not intended to apply to the K-1 nonimmigrant visa classification because the bar applies only to immigrant visa

petitions. Next, the Petitioner contends that the Beneficiary's due process rights under the fifth amendment of the U.S. Constitution were violated because she was not notified of the evidence suggesting her first marriage was entered into for the sole purpose of obtaining an immigration benefit, and therefore, could not properly confront and refute this evidence. The Petitioner asserts that because the U.S. Department of State's Consular Officer did not ask her any questions at her second interview, she was deprived of due process. Moreover, citing to the regulation at 8 C.F.R. § 103.2(b)(16), the Petitioner asserts that the Director's reliance on a Department of State memorandum to USCIS, without providing the Beneficiary a copy of the memorandum, is a deprivation of her due process rights. Third, the Petitioner relies on *Ching v. Mayorkas*, 725 F.3d 1149, 1156 (9th Cir. 2013) to assert her rights have been violated and submits that the Director failed to consider the ramifications of *Ching* to the Petitioner's case by dismissing its applicability in a conclusory fashion. Fourth, the Petitioner asserts there is insufficient evidence to meet the "substantial and probative" evidence standard to conclude the Beneficiary's first marriage was fraudulent because the Director relied on minor inconsistencies that can be reconciled, a perceived lack of communication between the parties, and one spouse's extramarital affair. In addition to the above contentions, 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 the marriage fraud ban may be applied to fiancé(e) petitions, and furthermore, we do not find the new evidence submitted on appeal overcomes the substantial and probative evidence that the Beneficiary's prior marriage was fraudulent within the meaning of section 204(c) of the Act.

As to the Petitioner's assertion that the Director erroneously relied on our non-precedent decision, *Matter of C-Y-L*, we acknowledge that non-precedent decisions apply existing law and policy to the specific facts of an individual case, and only precedent decisions bind USCIS employees as they administer the Act. *See* 8 C.F.R. § 103.3(c). However, while we discourage the citation of our non-precedent 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(e) petitions. Furthermore, the Board of Immigration Appeals (the Board) recently held that the marriage fraud bar is applicable to fiancé(e) 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(e) 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(e) petitions regardless of their nonimmigrant classification.[1] *Id.*

We have considered the Petitioner's assertion that the marriage fraud ban is inapplicable based on its placement under section 204, which is titled "Procedure for Granting Immigrant Status;" however, we find this assertion unpersuasive. The Supreme Court has twice unanimously found that 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) (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").

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

On appeal, the Petitioner provides an updated statement from the Beneficiary in which she explains why the inconsistencies cited in the Director's decision should not implicate the marriage fraud ban. For example, the Beneficiary's ex-spouse provided emails exchanged between the Beneficiary and himself in English, even though the Beneficiary's primary language is Amharic. The Beneficiary explains that because she is college educated and knew "some English" she communicated with her ex-spouse in English. This explanation is unpersuasive because it does not explain why the parties would have chosen to communicate in a language that was not their primary language. (The Beneficiary's ex-spouse was born in Ethiopia and according to the Beneficiary, the couple met in high school). *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (standing for the proposition that discrepancies in a record must be resolved with independent, objective evidence pointing to where the

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[1] The Petitioner outlines the fraud prevention measures applicable to the fiancé(e) visa procedures to assert that Congress created a separate framework to detect fraud within this visa classification. While we agree that the fiancé(e) visa process incorporates measures to detect and prevent fraud, it is unclear how this framework relates to the marriage fraud bar's applicability in the fiancé(e) visa context. In other words, the issue here is not whether the current relationship is fraudulent, but whether the marriage fraud bar found at section 204(c) of the Act bars the fiancé(e) petition's approval. The Petitioner's assertion does not address this central issue.

[2] 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 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 the Office of the General Counsel memoranda as "internal Service memorandum" that are "merely opinions [and] as such, adjudicators are not bound by OGC recommendations").

truth lies). The Beneficiary states that for "difficult language issues" she would seek help from friends, however this again does not explain why she would choose to communicate with her ex-spouse in English, when her primary language is Amharic. *Id.* Furthermore, to the extent the Beneficiary's explanation relates to her email exchanges with her ex-spouse, the emails themselves do not contain any difficult language. *Id.* The emails constitute basic exchanges and contain minimal information to suggest the parties intended to share a life together, which the Beneficiary's statement does not address except to state that the parties also spoke on the phone. *Id.* We note that because the parties were engaged in 2010, married in [redacted] 2012 and the emails were submitted in June 2014, the lack of substantive exchange in the emails is not probative of a mutual intent to share a life together. *See Matter of Chawathe*, 25 I&N Dec. at 375 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence). Furthermore, we have considered the Beneficiary's assertion that she could only send emails from an internet café, and the evidence submitted on appeal to establish that Ethiopia has slowly ramped up internet access. The document, "Internet Development in Ethiopia: High-Level Findings from the After Access Survey," explains that internet access in Ethiopia grew from 3% in 2012 to 16% in 2022. While the document does establish that internet access was limited, the Beneficiary clearly had access to the internet, thus this information is not relevant or explain why the substance of the emails, which covered several years of their purported relationship, lack indicia of a bona fide marital relationship. *Id.*

The Beneficiary's statement also describes the difficulties she has had in documenting her communications with her ex-spouse between the years 2009 (when they became a couple) and 2012 (when they married in Ethiopia), and that she is unable to obtain call records and copies of email exchanges due to the unavailability of these records. While the passage of time may create difficulties in documenting past events, it remains the parties' burden to establish their claims. *See Matter of Chawathe*, 25 I&N Dec. at 375. The Beneficiary also explains that she could not obtain more photographs from her wedding day to prove the existence of 200 guests because the photographer only keeps records for one to two years. Similarly, she explains the bank could not provide records dating back more than one or two years. We have considered the Beneficiary's explanations however she did not corroborate any of these claims with independent, objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Furthermore, we agree with the Director that "the size of the wedding is not determinative as to whether a marriage is bona fide or solely for immigration purposes." Nonetheless, the Beneficiary's testimony that there were 200 guests at her wedding is inconsistent with the photographic evidence of the event, and she has not been able to corroborate her claim with additional photographic evidence. *Id.* And, while we acknowledge the additional letters from the Beneficiary's relatives claiming that 200 guests were at the wedding, the letters do not provide probative details of the event or explain the lack of photographic evidence of the wedding event. Therefore, they are insufficient to establish the parties' burden. *Id.*

The Beneficiary explains that she concealed her brother's residency in [redacted] Nevada to the Consular Officer because "although he is my blood brother, we were fighting so much and he did not support me so I personally did not consider him my brother." And, she also claims she did not have an opportunity to explain this to the Consular Officer. The Beneficiary's explanation for this discrepancy does not sufficiently explain why she concealed her brother's residence in the United States. *Matter of Ho*, 19 I&N Dec. at 591-92. Because the Beneficiary's explanation is insufficient to explain the discrepancy, we agree with the Director's conclusion that her failure to disclose her

brother's residence and occupation in the United States undermined her credibility and created further doubt about her intentions at the time of marriage. *Id.*

The Director pointed out that the Beneficiary's [redacted] 2016 divorce came after her ex-spouse's Form I-130 petition was revoked, with the implication that the Beneficiary sought a divorce only after her marriage was no longer a viable option to immigrate to the United States. The Beneficiary contends that the timing of her divorce in [redacted] 2016 did not have to do with her ex-spouse's Form I-130 petition being revoked in March 2016. Instead, she explains that she filed for divorce because she recognized her marriage had broken down. However, the Beneficiary does not explain why she believed her marriage was still viable if she also believed her ex-spouse was living with another woman and was no longer communicating with her. *Matter of Ho*, 19 I&N Dec. at 591-92. The Beneficiary states that at the time of her second consular interview in September 2014, she realized that what the consular officer told her about her ex-spouse living with another woman was true. The Beneficiary further states that after her second interview, her ex-spouse stopped communicating with her. Thus, the Beneficiary's statements appear internally inconsistent, because she claims that in September 2014, she understood her ex-spouse was living with someone else and no longer communicated with her, but that she did not seek a divorce until later because she still believed her marriage was viable. This internal inconsistency cannot be reconciled with the evidence of record. *Id.* Thus, we agree with the Director that the timing of the Beneficiary's divorce is circumstantial evidence that her marriage was not bona fide. *See Matter of P. Singh*, 27 I&N at 608 (holding that "both direct and circumstantial evidence may be considered in determining whether there is "substantial and probative evidence" of marriage fraud under section 204(c) of the Act.")

The totality of the direct and circumstantial evidence of record supports the Director's conclusion that there is substantial and probative evidence to establish the Beneficiary's prior marriage was not bona fide and was entered into for the purpose of obtaining an immigration benefit in the United States. As such, the marriage fraud ban applies to this fiancé(e) petition and bars its approval.

As to the Petitioner's assertions that her due process rights have been violated, we agree with the Director that decisions by consular officers are not reviewable, and thus we lack jurisdiction to review the actions or findings of the U.S. Consular Officer. *See e.g.*, *Baan Rao Thai Restaurant v. Pompeo*, 985 F.3d 1020, 1024 (D.C. Cir. 2021) (explaining that the consular nonreviewability doctrine "shields a consular official's decision to issue or withhold a visa from judicial review"); *see also*, *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950) (explaining that courts cannot "review the determination of the political branch of the Government to exclude a given [noncitizen]"). The Petitioner also claims that the Director deprived the Beneficiary of her due process rights by citing to information contained in the U.S. Department of State's memorandum, and not disclosing the memorandum to the Beneficiary. We disagree. The Director issued a Notice of Intent to Deny (NOID) informing the parties of the derogatory information contained in the U.S. Consular Officer's memorandum and provided the parties an opportunity to respond. As such, the Director complied with the requirements under 8 C.F.R. § 103.2(b)(16) and we do not find any due process violation.

The Petitioner cites to *Ching v. Mayorkas* to bolster her assertion that the Beneficiary's due process rights have been violated. In *Ching*, the Ninth Circuit determined that Ching, who was facing deportation, was entitled to confront her ex-spouse in a hearing. However, the facts in *Ching* are distinguishable from those here because Ching's ex-spouse provided USCIS with a written admission

that his marriage to Ching was entered into for immigration purposes. Here, the Beneficiary's ex-spouse has not provided such a statement, therefore it is unclear what remedy the Petitioner is seeking. Furthermore, as stated above, the Director's NOID informed the parties of the derogatory information in this case and the parties have been provided an opportunity to respond as required under 8 C.F.R. § 103.2(b)(16).

III. CONCLUSION

As the record contains substantial and probative evidence that the Beneficiary married her 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. Finally, the Petitioner has not established that the Beneficiary's due process rights have been violated. The appeal will therefore be dismissed, and the petition will remain denied.

ORDER: The appeal is dismissed.