U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19418448

Date: MARCH 21, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for an Alien Worker

The Petitioner, an adult foster care business, seeks to permanently employ the Beneficiary as a direct care worker. It requests his classification as an "other worker" under the third-preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(iii), 8 U.S.C. § 1153(b)(3)(A)(iii). This employment-based "EB-3" immigrant classification allows a U.S. employer to sponsor a foreign national for lawful permanent residence who is capable of performing unskilled labor that requires less than two years of training or experience and is not of a temporary or seasonal nature.

The petition was initially approved, but the Director of the Nebraska Service Center subsequently revoked the approval. The Director determined that the Beneficiary was barred from receiving the requested immigration benefit under section 204(c) of the Act because there was substantial and probative evidence that the Beneficiary's marriage was entered into for the purpose of evading U.S. immigration laws.

On appeal, the Petitioner claims that the Director did not have good and sufficient cause to revoke the petition's approval based on section 204(c) of the Act.

The AAO reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). It is the Beneficiary's burden in these proceedings to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

Upon *de novo* review we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working

conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may 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.

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

> Notwithstanding the provisions of subsection (b)[1] 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[2] 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.

Thus, section 204(c) of the Act provides that no family- or employment-based immigrant petition shall be approved if the alien has entered into a marriage, or attempted or conspired to do so, for the purpose of evading U.S. immigration laws.

Furthermore, before a beneficiary obtains lawful permanent residence USCIS may revoke a petition's approval "at any time" for "good and sufficient cause." Section 205 of the Act, 8 U.S.C. § 1155. At issue here is whether there was good and sufficient cause for the revocation decision.

II. ANALYSIS

The instant petition, Form I-140, Immigrant Petition for Alien Worker (I-140 petition), was filed in February 2018, and approved on November 26, 2018.

On April 6, 2021, the Director issued a notice of intent to revoke (NOIR) the approval. In the NOIR the Director stated that it appeared the Petitioner did not provide complete, true, and correct information on the Form I-140 regarding the previous applications and petitions filed by, and on behalf of, the Beneficiary – in particular, a couple of Forms I-130, Petition for Alien Relative, filed by the Beneficiary's wife, and several adjustment of status applications (Forms I-485) filed by the Beneficiary – and that these proceedings led to determinations by U.S. Citizenship and Immigration Services (USCIS), affirmed by the Board of Immigration Appeals (BIA), that the Beneficiary failed to establish that he had entered into a *bona fide* marriage, rather than a sham marriage for the purpose of evading immigration laws. Under section 204(c) of the Act, therefore, the Beneficiary's I-140 petition would not be approvable..

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[1] Subsection (b) of section 204 of the Act refers to preference visa petitions, both family based and employment-based, that are verified as true and forwarded to the State Department for issuance of a visa.

[2] In *Matter of Samsen*, 15 I&N Dec. 28 (BIA 1974), the Board of Immigration Appeals held that a determination of whether marriage was entered into for the purpose of evading the immigration laws is to be made on behalf of the Attorney General by the district director in the course of adjudicating the subsequent visa petition.

Following the Petitioner's response to the NOIR, the Director issued a decision revoking the approval of the I-140 petition. In the revocation decision the Director recounted in detail the Beneficiary's history in the U.S. immigration system, beginning in 2002. For the purposes of this appeal we will focus on the proceedings which led to the findings that section 204(c) of the Act barred the approval of the instant petition.

In May 2002 a special immigrant petition (Form I-360) was filed on the Beneficiary's behalf by the Diocese of [redacted] (in Wisconsin). The petition was approved in May 2003, but the Diocese withdrew its support for the Beneficiary in May 2004 and the I-360 petition's approval was revoked in March 2007. In a letter to the Beneficiary dated August 21, 2007, the Archdiocese of [redacted] revoked his priest faculties and advised him to return to his home diocese in Nigeria. Ten days later, on August 31, 2007, the Beneficiary married a U.S. citizen, who then filed a Petition for Alien Relative (Form I-360) on September 6, 2007, seeking to re-classify the Beneficiary as the spouse of a U.S. citizen.

In May 2009 USCIS conducted an unannounced site visit to the residence allegedly shared by the Beneficiary and his wife in [redacted] Michigan, and talked with the wife. She stated that the Beneficiary occasionally worked as a priest, but she did not know his specific religious affiliation. The USCIS officer(s) noted that the premises were devoid of male clothing, toiletries, or pictures of the Beneficiary. USCIS then issued a notice of intent to deny (NOID) the I-130 petition for failure to prove that the petitioner and the Beneficiary were in a *bona fide* marital relationship. Following the petitioner's response USCIS denied the I-130 petition in September 2009. The petitioner appealed, but the BIA dismissed the appeal in March 2011, stating that the absence of male items at the purported joint residence "would be a sufficient basis on which to conclude that [the petitioner] had not met her burden of proof" that she was in a *bona fide* marital relationship with the Beneficiary.

The Beneficiary's wife filed a second I-130 petition in June 2011. In February 2012 USCIS conducted an interview of the petitioner and the Beneficiary in the [redacted] Michigan field office, and sworn statements were taken. There were numerous discrepancies in their testimony regarding such subjects as where they first met, wedding day details, where they lived before and after their marriage, their personal and family histories, and household finances. USCIS issued a NOID, and after receiving a response from the petitioner, USCIS denied the I-130 petition in March 2012 on the ground that the evidence was insufficient to establish the *bona fides* of the marital relationship. The decision was appealed, but the BIA dismissed the appeal in February 2014, stating that "[i]n light of the discrepancies in the record, we affirm the determination that the petitioner did not meet her burden of proof by establishing the claimed relationship between herself and the beneficiary."

The Director summed up the foregoing procedural history as "reflect[ing] that there is substantial and probative evidence to show that [the petitioner] and the Beneficiary entered into the marriage to evade immigration laws." Recapping the evidence, the Director noted that the Beneficiary married his wife 10 days after receiving the letter from the Archdiocese of [redacted] revoking his priest faculties, and that the subsequent USCIS site visit and field office interview revealed numerous discrepancies indicating that the Beneficiary and his wife did not reside in the same home or share a life together.

The Petitioner's response to the NOIR in the instant I-140 proceeding did not address any of these issues, and did nothing to strengthen the claim that the Beneficiary and his wife had a *bona fide* marital relationship during the time when the two I-130 petitions were adjudicated. The Petitioner claimed that USCIS was somehow trying to change the BIA's decision(s), but the Director noted that USCIS has the authority under section 204(c) of the Act to revoke the approval of a petition based on its own independent evaluation of whether there is substantial and probative evidence that a marriage was entered into for the purpose of evading the immigration laws. The Director determined that such evidence was present in this case, and revoked the petition's approval.

On appeal the Petitioner asserts that there was no "good and sufficient cause" for the Director to revoke the approved I-140 petition, as required in section 205 of the Act. According to the Petitioner, the Director's revocation decision conflicted with the BIA decisions confirming the denials of the previous I-130 petitions because the basis of the BIA decisions was the petitioner's "failure to sustain her burden of proof" that she had a *bona fide* marriage with the Beneficiary, not a specific finding that the marriage was an "attempt to evade the immigration laws" or any finding of fraud or material misrepresentation with regard to the marriage. The Petitioner's argument is off point, however, because no specific finding of that nature is required under section 204(c) of the Act for visa denials or revocations.

The standard for reviewing section 204(c) appeals is laid out in *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). In *Tawfik* the Board held that visa revocation pursuant to section 204(c) may only be sustained if there is substantial and probative evidence in the record of proceeding to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. *See also Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972). *Tawfik* at 167 states the following, in pertinent part:

> 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. Accordingly, the district director must deny any subsequent visa petition for immigrant classification filed on behalf of such alien, regardless of whether the alien received a benefit through the attempt or conspiracy. As a basis for the denial it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy. However, the evidence of such attempt or conspiracy must be documented in the alien's file and must be substantial and probative.

(citing *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972); and 8 C.F.R. § 204.1(a)(2)(iv) (1989)). Tawfik states that the revocation decision may be made at any time and is properly determined by the district director in the course of his adjudication of the subsequent visa petition. *Id.* at 168 (citing *Matter of Samsen*, 15 I&N Dec. 28 (BIA 1974)).

In this case there is substantial and probative evidence that the Beneficiary entered into his marriage with a U.S. citizen in an attempt to evade U.S. immigration laws. This evidence is documented in the Beneficiary's file and discussed in this decision, as well as in prior decisions of USCIS and the BIA. Therefore, since section 204(c) of the Act should have precluded the approval of the I-140 petition, we determine that there is good and sufficient cause to revoke that approval in accord with section 205 of the Act.

III. CONCLUSION

For the reasons discussed in the foregoing analysis, the Petitioner has not overcome the grounds for revocation. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.