U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18000204

Date: JUN. 16, 2022

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 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 denied the petition on the ground that the Petitioner was barred from being approved the petition because he had married his first spouse, [redacted] for the purpose of evading the immigration laws. *See* Section 204(c) of the Act, 8 U.S.C. § 1154(c). The Petitioner appeals, contending that the marriage between him and [redacted] was *bona fide*, and that he did not marry her to evade immigration laws.

In these proceedings, it is the Petitioner's burden to establish, by a preponderance of the evidence, 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(AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).[1] Upon *de novo* review, the Chief's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

A foreign national may be classified as an immigrant investor if he or she invests the requisite amount of qualifying capital in a new commercial enterprise. The investor must show that his or her investment will benefit the United States economy and create at least 10 full-time jobs for qualifying employees. 8 C.F.R. § 204.6(j)(4) (2018). U.S. Citizenship and Immigration Services (USCIS), however, cannot approve an immigrant petition for an individual who "has previously been 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 Attorney General to have been entered into for the purpose of evading the immigration laws . . . ." Section 204(c) of the Act. The "central question in determining whether a sham [or fraudulent] marriage exists is whether the parties intended to establish a life together at the time they were married." *Matter of P. Singh*, 27 I&N Dec. 598, 601 (BIA 2019)

[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.

(internal quotation marks omitted). USCIS must examine the record to determine if there is "substantial and probative evidence" of fraud warranting a petition's denial under Section 204(c) of the Act. 8 C.F.R. § 204.2(a)(1)(ii); *Matter of P. Singh*, 27 I&N Dec. at 602 (providing that if USCIS invokes Section 204(c) of the Act to deny an immigrant petition, it must show by "substantial and probative evidence" that the marriage was fraudulent from its inception).

A petitioner bears the initial burden of proving his or her eligibility for a requested benefit by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361. If the record contains evidence of marriage fraud, the petitioner must generally rebut that derogatory information by the same preponderance-of-evidence standard. *Matter of P. Singh*, 27 I&N Dec. at 606. If, however, USCIS denies a petition based on marriage fraud, the record must contain substantial and probative evidence of the fraud, meaning evidence that a marriage was more than probably a sham. *Id.* at 606-07. The Board of Immigration Appeals issued *Matter of P. Singh* in 2019, before the Chief denied the petition in 2021. *Matter of P. Singh* clarifies that substantial and probative evidence of marriage fraud, which triggers the bar to a petition's approval under Section 204(c) of the Act, means evidence establishing "that it is more than probably true that the marriage [was] fraudulent." *Id.*, 27 I&N Dec. at 607. The requisite degree of proof is lower than clear and convincing evidence, but higher than a preponderance of evidence, the normal standard of proof in petition proceedings. *Id.*

Because *Matter of P. Singh* is a precedent decision, all USCIS officers must follow it in proceedings involving the marriage fraud bar under Section 204(c) of the Act. *See* 8 C.F.R. § 103.10(b). However, in this case, the Chief did not include a discussion on *Matter of P. Singh* or the substantial and probative nature of the evidence of marriage fraud. We will therefore withdraw the Chief's decision and remand the matter.

On remand, the Chief should review the record in its entirety and conduct a proper independent analysis of the applicability of Section 204(c) of the Act. This should include reviewing: (1) evidence discussed in the November 2004 decision denying the Petitioner's Petition to Remove Conditions on Residence (Form I-751); (2) evidence discussed in the June 2014 decision denying the Petition for Alien Relative (Form I-130) filed by the Petitioner's current spouse; (3) documents associated with the Petitioner's [redacted] 2015 expedited removal from the United States upon a finding that he was inadmissible under Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for "appear[ing] to have engaged in marriage fraud"; (4) two Forms G-166C, Memorandum of Investigation, memorializing statements that the Petitioner and [redacted]'s building supervisor made to immigration officers in November 2004; and (5) a [redacted] 2004 Form I-213, Record of Deportable/Inadmissible Alien, concerning the Petitioner.[2] If, pursuant to *Matter of P. Singh*, the Chief concludes that the evidence establishes the Petitioner "more than probably" engaged in marriage fraud, the Chief should deny the petition under Section 204(c) of the Act, and notify the Petitioner and explain how the evidence meets the standard of proof.[3]

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[2] On appeal, the Petitioner alleges that an immigration judge had deemed the two Forms G-166C and the Form I-213 inadmissible in immigration court. The Petitioner, however, has not submitted evidence specifically confirming such a finding by the immigration judge. Regardless, the Petitioner has not shown that an alleged evidentiary finding by an immigration judge is binding on USCIS in its adjudication of the petition.

[3] Pages 5 and 6 of the Chief's decision discuss waivers of inadmissibility that the Petitioner must request to gain admission to the United States. These waivers, or the Petitioner's need for them, however, are not relevant to whether he is eligible for the Form I-526 petition or whether he is barred from being approved the petition under Section 204(c) of the Act.

As the Chief's decision does not include a discussion on *Matter of P. Singh* or the substantial and probative nature of the evidence of marriage fraud, we will withdraw the decision and remand the matter.

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