U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24544611

Date: MAR. 02, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified in section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii).

The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), determining it was not approvable, pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c), because the Petitioner had previously sought to be accorded immediate relative status as the spouse of a U.S. citizen by entering into a marriage for the purpose of evading the immigration laws. 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

Petitioners who are spouses or former spouses of a U.S. citizen may self-petition for immigrant classification under VAWA if they demonstrate, in part, that they were in a qualifying relationship as the spouse of a U.S. citizen, are eligible for immigrant classification based on this qualifying relationship, entered into the marriage with the U.S. citizen spouse in good faith and were battered or subjected to extreme cruelty perpetrated by their spouse. Section 204(a)(1)(A)(i)-(iii) of the Act. U.S. Citizenship and Immigration Services (USCIS) will not approve a visa petition if the petitioner previously was accorded, or sought to be accorded, immediate relative status as the spouse of a U.S. citizen by attempting, conspiring, or entering into a marriage for the purpose of evading the immigration laws. Section 204(c) of the Act.

For the fraudulent marriage prohibition to apply, the record must contain "substantial and probative" evidence of such an attempt or conspiracy. 8 C.F.R. § 204.2(a)(1)(ii). This prohibition applies regardless of whether the petitioner received a benefit through the attempt or conspiracy. Id. The "substantive and probative evidence" standard of proof means that the evidence establishes that it is

"more than probably true that the marriage is fraudulent." See Matter of P. Singh, 27 I&N Dec. 598, 607 (BIA 2019) (explaining that this standard is "higher than preponderance of the evidence and closer to clear and convincing evidence" and that this relatively high standard is needed because "the consequence of engaging in marriage fraud under section 204(c) of the Act is a permanent bar to the approval of any future visa petition"). In making this determination, we consider "the nature, quality, quantity, and credibility of the evidence in the record . . . in its totality," which may include "direct or circumstantial evidence." Id. at 610. The ultimate determination is "whether the parties 'intended to establish a life together at the time they were married.'" See id. at 601 (citing Matter of Laureano, 19 I&N Dec. 1, 203 (BIA 1983)).

We must consider any credible evidence relevant to the VAWA petition, however, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

## II. ANALYSIS

### A. Relevant Procedural History and Background

The Petitioner entered the United States in January 2004 on a student visa at the approximate age of 31. In [redacted] 2005, the Petitioner married V-R-,[1] who filed Form I-130, Petition for Alien Relative, on his behalf in July 2005. The Petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application). The parties did not appear for their interview scheduled in December 2005, nor their rescheduled interview for March 2006, and the I-130 petition and adjustment application were denied in April 2006. In April 2010, the Petitioner filed for asylum and his case was referred to Immigration Court for further proceedings. In 2014, the Petitioner divorced V-R-. In [redacted] 2016, the Petitioner married P-S-. In a decision dated April 2019, the Immigration Court denied the Petitioner's requests for relief. As a factor in the Court's analysis, the Immigration Judge assessed the Petitioner's mental health and determined that the Petitioner testified in a "consistent, believable, and forthright manner" and stated, in relevant part,

> [The Petitioner] admitted that the reason he pursued a fraudulent marriage instead of asylum relief was because he did not know about asylum relief . . . . He also engaged in a marriage fraud scheme in which he paid someone to marry him, applied for adjustment of status with USCIS and submitted an application and supporting evidence of a marriage, demonstrating that his mental health conditions were not so sever[e] as to hinder his ability to apply for immigration relief.

The Petitioner filed his VAWA petition in March 2020. The Director issued a notice of intent to deny (NOID), identifying parts of the record evidencing the Petitioner was subject to the provisions of section 204(c) of the Act and providing him an opportunity to respond. In response to the NOID, the Petitioner provided an affidavit attesting to the following: his parents began pressuring him to marry in high school. He left Taiwan to get away from his parent's pressure but he eventually "gave in." His boyfriend at the time helped him post an ad on the internet and V-R- responded. However, his boyfriend, in jealousy, contacted USCIS and provided details about the Petitioner's marriage then told

[1] We use initials to protect the identify of individuals.

the Petitioner what he had done. He felt guilt about marrying V-R- and decided to not attend his interview. The Petitioner also submitted his asylum interview notes, where he testified how he left his family's home after the first year of high school because he and his family were targeted and attacked because he was a gay man. The Petitioner submitted the affidavit he provided in support of his claim for asylum. The affidavit confirmed that he posted an ad specifying he would marry a woman for "cultural reasons" and would pay $5,000. He attested to being aware that V-R- "needed money badly," she had three children and lived with her mother. He said she agreed to accept half of the money after the wedding ceremony, and the rest after she underwent an interview with USCIS. He further said: after they got married, he and V-R- went to take photos for their I-130 petition. He tried to communicate with her as she had agreed to accompany him to Taiwan to meet his family and he wanted to take photos with her as evidence to his family, but she did not meet with him again. He also said V-R- would call him threatening to report him to USCIS, and on the day of the interview she showed up yelling at his door. The Petitioner also confirmed he was aware that his former boyfriend wrote to USCIS to report "the fake marriage" he had entered into with V-R-.

The Director denied the VAWA petition, determining the Petitioner entered into his marriage with V-R- for the purpose of evading immigration laws. We agree.

B. The Petitioner is Subject to Section 204(c) of the Act

On appeal, the Petitioner asserts he was not given the opportunity to confront the evidence against him, citing to Ching v. Mayorkas, 725 F.3d 1149 (9th Cir. 2013). However, the Court, in Ching v. Mayorkas, explained that there is no statutory right of cross-examination in I-130 visa adjudications. 725 F.3d at 1154.[2] When the record contains evidence of marriage fraud, USCIS must advise the petitioner, and the burden shifts to the petitioner to rebut the finding of fraud and establish that the prior marriage was not entered into for the purpose of evading the immigration laws. Matter of P. Singh, 27 I&N Dec. at 605. Here, the Petitioner received sufficient notice of the derogatory information upon which the Director's decision was based and had an opportunity to rebut that information, as required by the governing regulations. See 8 C.F.R. § 103.2(b)(16)(i) (providing, in relevant part, that if a decision will be based on derogatory information, which the petitioner is unaware, and adverse to the petitioner, USCIS shall advise the petitioner of the derogatory information, offering an opportunity to rebut the information and present information on their own behalf before the decision is rendered).

The Petitioner also asserts his marriage to V-R- was not a sham marriage but one entered into due to parental pressure. While we acknowledge the Petitioner's statements that there were family-based reasons for his decision to marry V-R-, the record contains substantive and probative evidence that he did not intend to establish a life with her. The Petitioner does not explain what circumstances pushed him to decide to marry V-R- when he did, over a year after leaving Taiwan and over 15 years after leaving his parents' home. He described publishing an ad clearly expressing his intent to marry for "cultural reasons" and offering to pay $5,000. The ad was not provided to USCIS and the Petitioner does not claim the ad contained terms requesting, for example, the development of a relationship. In

[2] The Ninth Circuit also addressed whether the plaintiffs' Fifth Amendment due process rights were violated because they were not afforded the opportunity to cross examine statements made by the petitioner of a previously filed I-130 petition. As we are relying on the Petitioner's own statements, which the Director provided him notice of in the NOID, the analysis in Ching v. Mayorkas is not relevant here.

addition, the record establishes that at the time the ad was placed, the Petitioner was in a relationship with someone and maintained that relationship after his marriage to V-R-. Further, the Petitioner described, after meeting V-R- for the first time, that he became aware that she needed money, that she had three children and lived with her mother. He described the terms he laid out with her, which did not include living together or creating a life together. Rather, he negotiated making half of the payment to V-R- after they were married and the second half after she filed an I-130 petition and attended an interview with him. The Petitioner mentions that he wanted V-R- to travel with him to Taiwan, however, he provided no details or evidence that this was his intent. He described taking photographs for his I-130 petition on the day of his wedding and communicating with V-R- after that to obtain photographic proof of their relationship.[3] While he expresses guilt over marrying and says this was the reason he did not go through with his interview with USCIS, details he provides in the record establish that V-R- also refused to cooperate on the day of the interview and he was aware that his boyfriend informed USCIS that the marriage was fraudulent. In other words, the Petitioner does not establish that his guilt amounted to an intent to no longer seek immediate relative status of a U.S. citizen by attempting, conspiring, or entering into a marriage for the purpose of evading the immigration laws. Moreover, the record contains the Immigration Judge's decision, noting the Petitioner's admission to pursuing a fraudulent marriage and engaging in a fraudulent marriage scheme. The Petitioner asserts that the Immigration Judge did not make a formal finding of fraud and we should not rely on this summarized testimony. However, this testimony, along with little evidence of the Petitioner's intent to establish a life with V-R-, and his contemporaneous request to V-R- to marry and file for immigration status, when viewed in totality, establishes that it is more than probably true that the marriage is fraudulent.

## III. CONCLUSION

The record contains substantial and probative evidence that the Petitioner attempted, conspired, or entered into his marriage with his first U.S. citizen spouse for the purpose of evading the immigration laws. As such, the Petitioner is subject to section 204(c) of the Act and his VAWA petition based on his marriage to his second U.S. citizen spouse may not be approved.

ORDER: The appeal is dismissed.

[3] We note that the Petitioner cites to United States v. Orellana-Blanco, 294 F.3d 1143 (9th Cir. 2002), for the proposition that marriages for green cards may be genuine and not sham marriages, discussing how "an intent to obtain something other than or in addition to love and companionship . . . does not make a marriage a sham." However, omitted from the Petitioner's brief is that the court continues on to provide, "[r]ather, the sham arises from the intent not to establish a life together." Id. at 1151 (internal quotations omitted). As discussed above, the Petitioner did not demonstrate that he intended to establish a life together with V-R-.