



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 26712911

Date: JUL. 24, 2023

Appeal of Cleveland, Ohio Field Office Decision

Form I-140, Immigrant Petition for Alien Workers (Skilled Worker)

The Petitioner, a health insurance company, seeks to permanently employ the Beneficiary as a “business solutions provider.” The company requests his classification under the employment-based, third-preference (“EB-3”) immigrant visa category for professionals. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(i), 8 U.S.C. § 1103(b)(3)(A)(i). This category allows a prospective, U.S. employer to sponsor a noncitizen to obtain lawful permanent resident status to work in a job requiring at least a bachelor’s degree. *Id.*

After the filing’s initial grant, the Director of the Cleveland, Ohio Field Office revoked the petition’s approval, invoking the “marriage-fraud bar.” *See* section 204(c) of the Act, 8 U.S.C. § 1154(c). The Director concluded that the Beneficiary married his former U.S.-citizen spouse primarily to evade immigration laws, barring the petition’s approval. *Id.* On appeal, we withdrew the Director’s decision and remanded the matter for further analysis. *In Re: 16608481* (AAO Jun. 30, 2021). On remand, the Director again revoked the petition’s approval, concluding that the Beneficiary “more than probably” engaged in a sham marriage.

The matter returns to us on a second appeal. The Petitioner contends that the Director erroneously applied the marriage-fraud bar and disregarded evidence of the marriage’s *bona fides*.

In these revocation proceedings, the Petitioner bears the burden of demonstrating eligibility for the benefit request by a preponderance of the evidence. *See Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988) (citation omitted). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the record does not support the marriage-fraud bar’s invocation. We will therefore sustain the appeal.

I. LAW

Immigration as a professional generally follows a three-step process. First, a prospective employer must obtain certification from the U.S. Department of Labor (DOL) that: there are insufficient U.S. workers able, willing, qualified, and available for an offered position; and permanent employment of a noncitizen in the position would not harm wages and working conditions of U.S. workers with similar jobs. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i).

Second, an employer must submit a DOL-approved labor certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(F) of the Act. Among other things, USCIS determines whether a noncitizen beneficiary meets the requirements of a DOL-certified position and a requested immigrant visa category. 8 C.F.R. § 204.5(l)(3)(i), (ii)(C).

Finally, if USCIS approves a petition, a beneficiary 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.

“[A]t any time” before a beneficiary obtains lawful permanent residence, however, USCIS may revoke a petition’s approval for “good and sufficient cause.” Section 205 of the Act, 8 U.S.C. § 1155. USCIS properly issues a notice of intent to revoke (NOIR) a petition’s approval if the unrebutted and unexplained record at the time of the NOIR’s mailing would have warranted the petition’s denial. *Matter of Esteime*, 19 I&N Dec. 450, 451 (BIA 1987). The Agency properly revokes a filing’s approval if a petitioner does not respond to a NOIR or if the business’s NOIR response does not overcome the alleged revocation ground(s). *Id.* at 451-52.

II. ANALYSIS

USCIS cannot approve a visa petition for a noncitizen who has attempted or conspired to enter into a marriage “for the purpose of evading the immigration laws.” Section 204(c) of the Act. Even if legally valid where it occurred, a marriage “entered into for the primary purpose of circumventing the immigration laws” permanently bars approval of a visa petition. *Matter of P. Singh*, 27 I&N Dec. 598, 601 (BIA 2019) (citations omitted). To determine the existence of a fraudulent or sham marriage, adjudicators must determine whether the parties “intended to establish a life together at the time they were married.” *Id.* Officers must examine the parties’ conduct before and after the marriage to ascertain their intent, but “only to the extent that it bears upon their subjective state of mind at the time they were married.” *Id.*

“Substantial and probative evidence” must support a marriage-fraud finding. 8 C.F.R. § 204.2(a)(1)(ii). Thus, to invoke the marriage-fraud bar, the record must establish that a marriage was “more than probably” fraudulent. *Matter of P. Singh*, 27 I&N Dec. at 607. This standard of proof is higher than a preponderance of the evidence but lower than clear and convincing evidence. *Id.* at 607 n.7.

The Director based revocation of this petition’s approval largely on alleged discrepancies between the testimonies of the Beneficiary and his former spouse. After the Beneficiary’s spouse filed a family-based immigrant visa petition for him, a USCIS officer interviewed the couple in January 2015. *See* section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i) (allowing family-based, immigrant visa classification of noncitizen spouses of U.S. citizens as “immediate relatives”). The officer separated them, asked each the same series of questions, and alleged the following inconsistencies:

- As listed on his spouse’s petition for him, the Beneficiary stated that he, his spouse, and her 2-year-old son from a prior relationship lived together in [redacted] Ohio. But she testified at the interview that she and her son primarily lived in [redacted] Ohio, about 60 miles from [redacted] and saw the Beneficiary on weekends.
- She stated she had three brothers. He said she had only one brother.

- She stated she received disability benefits because she suffered from attention deficit hyperactivity disorder (ADHD) and bipolar disorder, psychological conditions that caused mood swings, depression, anxiety, and irritability. He said she received the benefits because she had problems with “stress.”
- She stated her mother helped her pay rent. He said he paid all the couple’s bills.
- She stated that the lease to the [] home listed her as a tenant. He said she was not on that lease.
- She stated that he proposed marriage to her with a ring. He said that, when he proposed, he did not give her a ring.
- She identified his joint financial sponsor as his uncle. *See* section 213A of the Act, 8 U.S.C. § 1183a (listing “requirements for sponsor’s affidavit of support”). He said his financial sponsor was a friend.
- She stated that her son attended a daycare facility in [] He said the boy attended daycare in []

The Director found that the Beneficiary’s marriage was “more than probably” fraudulent. The Director stated: “The beneficiary initially attempted to assert the couple lived together when they did not. The couple also provided discrepant testimony about essential elements to a relationship, including their [marriage] proposal, childcare, family members, and health issues.”

The Beneficiary and his spouse, however, provided credible explanations for some of the inconsistent testimony. They said the Beneficiary had met only one of her brothers, so he mistakenly thought she had only one male sibling. Also, they said he had told her that his uncle would serve as his financial sponsor but forgot to mention his friend’s later substitution into that role. Further, the couple explained that he had asked her to marry him twice: first without a ring; and then with a ring. He said that, consistent with his native Ghanaian culture, he did not believe that engagement required a ring and identified his first request as the marriage proposal. His U.S.-born spouse said she took seriously only the second proposal with the ring.

Also, the Director did not consider uncontroverted evidence of the couple’s relationship before their marriage. *See Matter of P. Singh*, 27 I&N Dec. at 601 (requiring consideration of parties’ conduct “before and after the marriage”). Both parties testified that they met at a university in November 2012 when she sat next to him at an African cultural event. They talked there, and she gave him her telephone number. The couple then frequently talked on the phone and began dating. The record shows that he got along well with her son. His two marriage proposals came a few weeks apart in November 2013, about a year after they met. The record shows that, after the couple’s engagement, the Beneficiary’s father, who lives in the United Kingdom, spoke to her mother on the phone. Thus, a preponderance of the pre-marital evidence indicates the couple’s intent to share their lives together.

Like the Director, we are troubled by the couple’s inconsistent testimony in January 2015 regarding their residences. On its own, however, evidence of separate residences does not establish a fraudulent marriage. *Matter of Tawfik*, 20 I&N Dec. 166, 169 (BIA 1990). Also, evidence indicates that the Beneficiary wanted his spouse and stepson to live with him in [] but that she resisted. She stated that “stress” and other symptoms from her psychological conditions caused her to remain in [] Because the couple did not cite this explanation at the time of their interview in January 2015, the Director discounted it. Both parties, however, described their separate residences as a source

of friction in their marriage, and the record shows they attended counseling together in 2015 in an effort to resolve the issue.

Further, about four months after the couple's initial interview, USCIS officers gathered additional evidence that suggests the couple's intent to share their lives together. The officers reported that they made unannounced visits to the Beneficiary and his spouse at their separate residences on a Tuesday in May 2015. Both spouses showed officers clothing at their homes belonging to the other party and stated that the Beneficiary visited his spouse in [REDACTED] almost every weekend. Additionally, the Beneficiary's home in [REDACTED] contained a child's bed, toys, and photographs of the Beneficiary's spouse and her son. She also showed officers photos on her cell phone and an airline ticket regarding the couple's trip to Hawaii together in March 2015. Additionally, the Beneficiary told the officers that his spouse was injured in an automobile accident in April 2015 and identified the person who cared for her son when she attended physical therapy appointments. The Beneficiary's spouse later confirmed the information the Beneficiary provided.

The record also contains evidence that: the Beneficiary and his spouse had joint car insurance; his employment health benefits covered her as a dependent; the couple had photographs of them together at their wedding, his university graduation, and with her son; and the couple presented numerous affidavits from family members and friends. The Beneficiary also had continuing contact with his mother-in-law, who also lived in [REDACTED]

Thus, while the couple's inconsistent testimony regarding their residences casts doubt on the bona fides of the Beneficiary's marriage, the record as a whole does not establish that the union was "more than probably" entered into for the purposes of evading immigration laws. We will therefore withdraw the revocation decision.

ORDER: The appeal is sustained.