No.
24-5520

SUPREME COURT OF THE UNITED STATES

Cyril Nnadozie Okoli,

Petitioner,

Vs.

Shanita R, Tucker,

United States Citizenship and Immigration Services,

Respondent,

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1)Whether the USCIS misinterpretation of 8 U.S.C. § 1154(c) is the permissible interpretation of the statute.

2)Whether 8 U.S.C. § 1154(c) required that a petition be denied if there's a substantial evidence that my former wife was coerced under threat of criminal exposure to lie under oath, that we conspired to enter into marriage for the purpose of evading immigration laws, but was contradicted by the marital evidence we had submitted.

3)Whether the federal courts erred to apply *de novo* review on a complaint for judicial review of a final agency action.

4)Whether the federal courts erred to apply the *plausibility standard* on complaint for judicial review of a final agency action.

5)Whether an admission of marriage fraud made in conjunction with the withdrawal of an earlier I-130 petition can be used as a dispositive evidence for a sham marriage.

6)Whether discrepancies in a spousal visa interview can be used as a dispositive evidence for an evidence marriage of fraud.

7)Whether a claim that a government official ignored or disregarded important evidence, or applied an incorrect legal conclusion to issue its denial is a plausible claim.

8)Whether a claim that a government official misstated or misrepresented important evidence constitutes a due process violation.

9)Whether a claim that a government official informed me that "the reason why you all come to the United States, but don't want to return to where you came

from is because we have everything. After this interview, you will be denied and sent to the immigration court for removal proceeding" constitutes an equal protection violation.

10)Whether a claim that my former wife was coerced to withdraw her I-130 petition filed on my behalf and to testify and admit that we entered into fraudulent marriage, because a USCIS official threatened to inform the Department of Transitional assistance "DTA" about her marital status which will impact her eligibility for food stamps, Massachusetts health insurance, monthly cash benefits and other welfare benefits constitutes an equal protection violation.

II. RELATED CASES

Okoliv. Tucker, 22-cv-10316, U.S. District Court of Massachusetts. Judgement entered Feb. 10, 2023.

Okoli v. Tucker, 23-1150, U.S. Court of Appeals for the First Circuit Judgement entered Jul. 9, 2024.

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The USCIS interpretation of 8 U.S.C. § 1154(c) were wrong; its errors are potentially devastating to efficient enforcement of the law. Millions of similarly situated non-citizens within the United States will be unlawfully denied and deported, because the USCIS employee's misconstrues the permissible interpretation of 8 U.S.C. § 1154(c), in other words, applies the wrong legal standard to determine the bona fides of a marriage, no remedy can repair the resulting harm to the public interest. Thus, the public has an unusual and compelling interest at stake.

IV. TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

1.The terms of title 8 U.S.C. § 1154(c) required the USCIS to determine that I entered my prior marriage fraudulently by a lack of marital evidence that showed an intent that my prior marriage was entered in good faith, rather than an admission of marriage fraud made in conjunction with a withdrawal of an earlier I- 130 petition. On that issue, no substantial evidence supports the finding of the special inquiry officer in ruling that my prior marriage was a subterfuge designed to evade immigration laws.

2.The terms of title 8 U.S.C. § 1184(d) required my former wife to establish that we entered into a bona fide marriage. My former wife in this case, established that a bona fide marriage had taken place by the marital evidence she submitted on January 16th, 2013, September 17th, 2015, and April 4th, 2016, proved that we entered into a good faith marriage with the requisite intent. So long as there is a "substantial and probative" evidence in my administrative record to show an intent that former wife and I entered into a good faith marriage, it will appear to this Court that my former wife's admission of marriage fraud made in conjunction with a withdrawal of an earlier I-130 petition is irrelevant to the 8 U.S.C. § 1184(d) determination. On the other hand, where, as here, my former wife was coerced by a USCIS examiner to avow different intentions, or else the department of transitional assistance "DTA" will be notified about her change of income due to our marriage. This Court will find that my former wife's allegiance that we entered into bad faith marriage lacks credibility. My former wife's coerced fraudulent intent alone to lose the benefit of 8 U.S.C. § 1184(d) is not squarely presented here.

V. PETITION FOR WRIT OF CERTIORARI

I Cyril Okoli, a wrongfully deported non-citizen, respectfully petition this honourable Court for a writ of certiorari to review the judgement of the First Circuit Court of Appeals.

VI. OPINIONS BELOW

The decision by the First Circuit Court of Appeals denying my direct appeal is not reported. The First Circuit Court denied my petition for Rehearing on August 22nd, 2024. The other is attached as an appendix.

VII. JURISDICTION

My petition for Rehearing to the First Circuit Court was denied on August 22nd, 2024. I invoke this Court's jurisdiction under 28 U.S.C. § 1257, having timely

filed this petition for a writ of certiorari within ninety days of the First Circuit judgement.

VIII. CONSTITUTIONAL PROVISIONS INVOLVED

Under Section 201 (b) of the Immigration and Naturalization Act, immediate relatives of United States citizens are granted certain preferences, including being excused from the numerical quotas imposed by the Act and being eligible for citizenship in three years instead of the customary five years. An alien who marries a citizen of the United States is entitled to immediate relative status, which is obtained by the filing of a petition by the citizen on behalf of his or her spouse. *See Almario v. Attorney General, 872F.2d147,149 (6thCir.1989).* "The clear policy of the Act is to allow United States citizens and lawful permanent residents to be united with their alien spouses where the marriage is bona fide." Matter of Isber, 20 I. &N. Dec. 676, Interim Decision 3203 (B.I.A. 1993).

The procedure for filing I-130 immediate relative petitions is governed by Section 204(c) of the Act. One provision contained in that Section, pursuant to which the Petitioner's petition was denied, provides that "no petition shall be approved if 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."8 U.S.C. § 1154(c)(2). In the Immigration Marriage Fraud Amendments of 1986, the House Report detailed the underlying purpose of this and related provisions:

Historically, U.S. immigration policy has recognized the importance of protecting nuclear families from separation by permitting immediate family members of U.S. citizens to immigrate to the United States without numerical limitation. Similarly, the law has long set aside a significant number of immigrant visas for immediate relatives of permanent resident aliens. Because of this special status accorded such alien relatives, aliens who either cannot otherwise qualify for immigration to the United States or

who, though qualified, are not willing to wait until an immigrant visa becomes available, frequently find it expedient to engage in a fraudulent marriage in order to sidestep the immigration law. *H. Rep. No. 99-906, at 8 (1986),* reprinted in *1986 U.S.C.C.A.N. 5978, 5980.* Thus, the purpose of § 1154(c) and related provisions is to prohibit aliens from entering into a marriage for the purpose of "side-stepping" the immigration laws.*Cf.Almario,872F.2dat152*("It cannot be denied that Congress has a strong and legitimate interest in deterring marriages which are entered solely for the purpose of obtaining Immigration benefits").

At the time of the issuance of the District Director's Notice of Intent to Deny one related regulation provided as follows:

The Act prohibits the approval of an immigrant 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. The director shall deny any petition filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file 8 C.F.R. § 204.1(d)(2).

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. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy.

Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file .8C.F.R.§204.2(a)(ii). Thus, under the most recent version of the regulation, the District Director is

required to deny a petition filed on behalf of any alien who is determined, on the basis of "substantial and probative evidence", to have attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

IX. STATEMENT OF THE CASE

Over 50 years ago, this Court held in *Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971)* Although, under § 706 of the Act, de novo review is not required here, and the Secretary's approval of the route need not 401 U. S. 403 meet the substantial evidence test, the reviewing court must conduct a substantial inquiry and determine whether the Secretary acted within the scope of his authority, whether his decision was within the small range of available choices, and whether he could have reasonably believed that there were no feasible alternatives. The court must find that the actual choice was not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," and that the Secretary followed the necessary procedural requirements. Pp. 401 U. S. 413-416.

In Camp v. Pitts, 411 U. S. 138 (1973) this Court held that the appropriate standard for review was, accordingly, whether the Comptroller's adjudication was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," as specified in 5 U.S.C. § 706(2)(A). In applying that standard, the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.

This case presents a question of whether the de novo review and plausibility standard can be invoked on a complaint for judicial review of a final agency action. I express a belief based on a reasoned and professional judgment that the First Circuit has misapplied or misinterpreted a prior Supreme Court precedent.

Background History

I m a 37-year-old native and citizen of Nigeria, I was admitted to the United States at New York, New York on or about August 5th, 2011 as a non-immigrant F-1 student, and on February 15th, 2012, my F-1 student status was terminated for non-payment of studies.

Approximately four months later, while I was employed as a Security Guard for Allied Barton Security Services, I met my former wife "Aisha Tanae Nelson". We began a relationship and were married on June 27th, 2012, in Springfield, Massachusetts.

In October 2012, My former wife filed an I-130 immediate relative petition on my behalf with the USCIS office in Lawrence, Massachusetts, we acted as partners in marriage with joint tenancy lease agreement, affidavits from friends, joint bank accounts, wedding photos and monthly rent receipts. "*See Sinadinovski, 1996 WL 435606* (relying upon the lack of this evidence to find that the marriage was not genuine)."

On January 20th, 2013, former wife and I were interviewed separately by an immigration officer, under oath and on June 4th, 2013, the USCIS examiner issued denial notice undermined relevant evidence that established intent that our marriage was entered in good faith. Regulated our life styles, such as to prescribe the amount of time we must spend together, or designate the manner in which either of us must elect to spend our time, in the guise of specifying the requirements of a bona fide marriage. Our first petition was denied due to discrepancies in our testimonies.

However, the concept of establishing a life as marital partners contains no federal dictate about the kind of life that we may choose to lead. The inference that we never intended a bona fide marriage from proof of discrepancies is arbitrary. *Matter of Soriano, 19 I. & N. Dec. 764, Interim Decision 3081 (B.I.A. 1988)*. To determine the bona fides of the marriage, the proper inquiry is whether the parties intended to establish a life together at the time they were married applying 8 U.S.C. § 1186a(c).

Evidence to establish an intent of a marriage entered in good faith could take many forms, including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences") *Matter of Patel, 19 I. & N. Dec. 774 (BIA 1988)* (evidence was credible and sufficient to overcome the presumption) *; Laureano, 19 I. &N. Dec.*

We appealed the USCIS denial decision to the Board of Immigration Appeals, and provided suitable justifications for any discrepancies in our interview answers. Our explanations were sufficient to address the discrepancies in the record. Our arguments explained why the marriage to former wife was bona fide. We explained why our marital evidence was sufficient to establish the legitimacy of our marriage. The appeal was subsequently dismissed without prejudice to re-applying by the Board of Immigration Appeals on August 22nd, 2014, "holding that some of the answers that other couples had consistent in their interview questions were discrepant in ours".

Former wife and I filed a second I-130 application. In addition, we acted as partners in marriage since June 2012 with joint bank accounts, joint car insurance, joint lease agreement, joint health insurance, joint tax returns, and joint car titles and car payments "*see Matter of Patel, 19 I. & N. Dec. 774 (BIA 1988)* (evidence was credible and sufficient to overcome the presumption"). Despite this turn of events, former wife and I celebrated our wedding anniversaries on the date of our first marriage on June 27th, 2012. We have been trying to conceive a child, and have undergone testing and treatment in order to conceive. We were interviewed separately by an immigration official on September 17th, 2015, again under oath and without counsel.

At this interview, my former wife's general claim of duress is that

she was coerced by the USCIS examiner to withdraw the Form I-130 petition, or else the DTA will be informed about her marital status and they will take away food stamps, cash benefits and Mass health insurance. *"See Matter of Arroyo-Mora, 28 Immigr. Rep. B1-74 (BIA Feb. 11, 2004) (nonprecedent)* (finding that evidence of marriage fraud was not substantial and probative where current marriage is bona fide and sole indication of marriage fraud is from ex-wife's uncorroborated letter)". "*see Neufeld Memo, supra note 36, at 2–3*. (For more on what an immigration adjudicator should do to determine that the underlying marriage was entered in good faith, *see supra § 42.04*". The administrative record discloses that the USCIS did not focus their attention on the key issue, the evidence relevant to our intent at the time we entered into marriage. Their inquiry, instead, turned on discrepancies and a coerced admission, which are irrelevant to and not dispositive of our intent issue. *Matter of Laureano, 19 I. & N. Dec. 1, 3 (BIA 1983)*(A prior admission of marriage fraud made in conjunction with a withdrawal of an earlier I-130 petition can be overcome by new evidence). The bona fides of a marriage do not and cannot rest on either marital partner's choice about his or her mobility after marriage.

There was an insufficient evidence to support the USCIS examiner's decision to charge me for conspiring to participate in a sham marriage, because a rational District Director could have credited the "substantial and probative" evidence in my administrative record, and discounted my former wife's false sworn testimony coerced by a USCIS examiner. The USCIS decisions did not articulate a satisfactory explanation for their denial, which shows that there's no rational connection between the facts and the USCIS's findings.

The USCIS violated our constitutional right to equal protection of the law. I allege that the USCIS violated our right to substantive due process of law when the immediate relative visa petition she filed on my behalf was denied. The substance of my equal protection allegation is that the USCIS

official subjected my former wife to an unconstitutional requirements based on her race (Black) and ethnicity (African American) during the interview on September 17th, 2015. The Equal Protection Clause of the Fourteenth Amendment prohibits discriminatory treatment on the basis of race and sex, and to a lesser degree status. As a result of my alleged discrimination led to the denial of my former wife's immediate relative visa petition. I allege that the above interview misconduct and denial decision was based exclusively on our race, ethnicity, nationality, and educational background.

The USCIS infringed our fundamental right to marriage through the scrutiny it applied to our marriage. Our constitutional rights were violated relating to the spousal visa petition former wife filed on my behalf. The USCIS official that interviewed former wife used coercive tactics. The interview tactics led my former wife to withdraw her visa petition. The alleged actions by the USCIS official resulted in a violation of our constitutional rights. Our Due Process rights were violated.

My former wife's coerced admission should not have been given more weight than the overwhelming marital evidence we had submitted. There was sufficient evidence in the record to find that my former marriage was bona fide, which the USCIS either ignored or failed to adequately consider. The USCIS reliance on such an inference that my former marriage was a sham marriage denied me the substantive due process of law. To find a marriage fraudulent, the government must identify "substantial and probative evidence" that the marriage was a sham from its inception. *"Surganova v. Holder, 612 F.3d 901, 904 (7th Cir. 2010); Matter of Tawfik, 20 I&N Dec. 166, 170 (BIA 1990); Cassell v. Napolitano, 2014 U.S. Dist. LEXIS 42766, *36-38 (N.D. Ill. 2014); Dinh v. United States, 2014 U.S. Dist. LEXIS 95287, *22-23 (D. Nev. 2014)".* There must be affirmative evidence that creates more than a "reasonable inference" of fraud. *"Tawfik, 20 I&N Dec. at 167-68";* 8 C.F.R. § 204.2(a)(1)(ii).

A marriage is a sham if the bride and groom did not intend to establish a life together at the time they were married. Marriage fraud may be committed by one party to the marriage, or a person who arranged the marriage, yet the other spouse may genuinely intend to marry. Also if one spouse intended the marriage to be a sham when the ceremony took place, but the other intended it to be genuine, then the one committed marriage fraud but not the other. That defendant married his wife so that he could get a green card does not make the marriage a sham, though it is evidence that might support an inference of a sham marriage. Motivations are at most evidence of intent, and do not themselves make the marriages shams. Just as marriages for money, hardly a novelty, or marriages among princes and princesses for reasons of state may be genuine and not sham marriages, so may marriages for green cards be genuine. An Intent to obtain something other than or in addition to love and companionship from that life does not make a marriage a sham. Rather, the sham arises from the intent not to establish a life together.

"*Lutwak v. United States, 344 U.S. 604, 73 S. Ct. 481, 97 L. Ed. 593 (1953)*"Marriage is bona fide when parties have undertaken to establish a life together.

"*Bark v. INS, 511 F.2d 1200, 1202 (9th Cir. 1975*)" Marriage is a sham if bride and groom did not intend to establish a life together at the time they were married.

"*Garcia-Jaramillo v. INS, 604 F.2d 1236, 1237 (9th Cir. 1979)*" It is within the authority of the INS to make inquiry into the marriage to the extent necessary to determine if it was entered for the purpose of evading the immigration laws. A marriage is a sham if the bride and groom did not intend to establish a life together at the time they were married.

Conduct and lifestyle before and after marriage is relevant to the extent it aids in determining the intent of the parties at the time they were married. "*Pena-Urrutiav.INS, 640 F.2d 242 (9th Cir. 1980)*". It is entirely appropriate for the INS

to inquire into the marriage to the extent necessary to determine whether it was entered into for the purpose of evading the immigration laws.

A marriage is a sham if the bride and groom did not intend to establish a life together at the time they were married "*United States v. Tagalicud, 84 F.3d 1180, 1185 (9th Cir. 1996)*".

A marriage is a sham if the bride and groom did not intend to establish a life together at the time they were married "*Oropeza-Wong v. Gonzales, 406 F.3d 1135 (9th Cir. 2005)*".

On April 4th, 2016, former wife and I filed a third I-130 petition, we acted as partners in marriage since June 2012 with joint bank accounts, joint car insurance, joint lease agreement, joint health insurance, joint tax returns, and joint car titles and car payments "*Matter of Patel, 19 I. & N. Dec. 774 (BIA 1988)* (evidence was credible and sufficient to overcome the presumption)". But we didn't appear for the interview due to a lot matrimonial dispute.

Subsequently, the annulment or divorce of our union was because the USCIS eventually notified the DTA about her change of income and her welfare benefits were substantially reduced. Former wife and I were divorced on November 3rd, 2016. *"Matter of Dixon, 16 I. &N. Dec. 335 (BIA 1977)"* (subsequent separation or divorce is not dispositive of intent at the time of marriage).

In 2017, I was still employed as a Security Guard for Allied Barton Security Services, when I met my current wife "Stephania Peluso". We began a relationship and were married on May 19th, 2017. My current wife filed an I-130 immediate relative petition on my behalf with the USCIS office in Lawrence, Massachusetts. We acted as partners in marriage since May 19th, 2017, with joint bank accounts, joint lease agreement, joint health insurance, joint utility bills, joint tax returns, and joint car titles and car

payments. We were interviewed separately by an immigration officer on August 20th, 2018, under oath and without the presence of a counsel. The USCIS examiner informed me at this interview that "the reason why you all come to the United States and don't want to return to where you came from is because we have everything. After this interview, you will be denied and sent to the immigration court for removal proceedings."

On October 25th, 2018, USCIS denied my former wife's third petition because we were no longer married. *Matter of McKee, 17 I&N Dec. 332 (BIA 1980)* (A spousal visa petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable).

On November 2nd, 2018, the USCIS issued its intent to deny the visa petition that was filed on my behalf in a written later that misstated the evidence my former wife submitted to show that my marriage to her was genuine. On December 20th, 2018, the USCIS issued a denial that falsely stated the evidence and relied on factors which the congress had not intended it to consider. We filed a timely administrative appeal, but the USCIS lost our notice of appeal. I filed a mandamus in March 2021, but the district court dismissed it. I later filed another complaint, and at the time of filing in February 2022, the USCIS had still not forwarded that notice of appeal to the BIA, the BIA later received and promptly denied the appeal two months after the complaint was filed.

Below is a link to my administrative record from a USCIS FOIA request :

https://ci3.googleusercontent.com/meips/ADKq_NakbZe_YcarsXKRLaICNfi88uKn7bvA2ZhWWds5s8idw00nUXSCp9M75IL2Zc9Y09vmSxEDO3Kv5EJUlGY9C4S4WYH8mMHfQ4qBQ1ZIlJuA5jStDSDX5sfFAw=s0-d-e1-ft#https://ssl.gstatic.com/docs/doclist/images/icon_10_generic_list.png

https://ci3.googleusercontent.com/meips/ADKq_NakbZe_YcarsXKRLaICNfi88u

Kn7bvA2ZhWWds5s8idw00nUXSCp9M75IL2Zc9Y09vmSxEDO3Kv5EJUlGY9C4S4WYH8mMHfQ4qBQ1ZIlJuA5jStDSDX5sfFAw=s0-d-e1-ft#https://ssl.gstatic.com/docs/doclist/images/icon_10_generic_list.png

District Court Decision

I filed a complaint in the District Court or sued to set aside the BIA's decision. The defendants, government officials opposed as such, moved to dismiss for failure to state a claim upon which relief could be granted. See Fed.R.Civ.P.12(b)(6). The district court allowed the motion, and the first circuit appeal ensued. The district court's jurisdiction here arises under the judicial review provisions of the APA, 5 U.S.C. § 706. This means, of course, that judicial review of the agency's decision must proceed on the administrative record. *Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 420, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971); Cousins v. Sec'y of the U.S. Dep't of Transp., 880 F.2d 603, 610 (1st Cir.1989) (en banc).*

The APA requires a reviewing court to set aside an agency decision when the administrative record shows that the decision is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An agency decision fails to pass this test if the administrative record reveals that "the agency relied on improper factors, failed to consider pertinent aspects of the problem, offered a rationale contradicting the evidence before it, or reached a conclusion so implausible that it cannot be attributed to a difference of opinion or the application of agency expertise." *Assoc'd Fisheries of Me., Inc. v. Daley, 127 F.3d 104, 109 (1st Cir.1997); see Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983).*

In this case, I purposed to file a copy of the administrative record with the district court. Instead, the defendants sought dismissal on the basis of the plausibility standard limned by the Supreme Court *in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007), and Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).*

The district court, following the government lead, examined my complaint for plausibility, found my allegations of arbitrary and capricious decision making implausible, and dismissed my action.

The plausibility standard is a screening mechanism designed to weed out cases that do not warrant either discovery or trial. *See, e.g ., Grajales v. P.R. Ports Auth., 682 F.3d 40, 46 (1st Cir.2012)*. To this end, the plausibility standard asks whether the complaint "contain[s] sufficient factual matter to 'state a claim to relief that is plausible on its face.' " *Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570)*. APA review, however, involves neither discovery nor trial. Thus, APA review presents no need for screening. It follows that the plausibility standard has no place in APA review. This makes perfect sense. The focal point of APA review is the existing administrative record. *See Camp v. Pitts, 411 U.S. 138, 142, 93 S.Ct. 1241, 36 L.Ed.2d 106 (1973) (per curiam)*. Allowing the allegations of a complaint to become the focal point of judicial review introduces an unnecessary and inevitably unproductive step into the process.

The relevant inquiry is—and must remain—not whether the facts set forth in a complaint state a plausible claim but, rather, whether the administrative record sufficiently supports the agency's decision. *Cf. Mass. Dep't of Pub. Welfare v. Sec'y of Agric., 984 F.2d 514, 525 (1st Cir.1993)* (explaining, in summary judgment context, that "the real question is whether the administrative record, now closed, reflects a sufficient dispute concerning the factual predicate on which [the agency] relied to support a finding that the agency acted arbitrarily or capriciously"). The plausibility standard does not apply to a complaint for judicial review of final agency action and that the district court therefore erred in invoking it. *Atieh v Riordan, 727 F.3d 73, 75 (1st Cir. 2013)*(the plausibility standard asks whether the complaint "contain[s] sufficient factual matter to 'state a claim to relief that is plausible on its face.' " *Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570)*. APA review, however, involves neither

discovery nor trial. Thus, APA review presents no need for screening. It follows that the plausibility standard has no place in APA review).

X. REASONS FOR GRANTING THE WRIT

Summary of the Law

In the discussion of the law, the BIA noted that "where there is reason to doubt the validity of a marital relationship, a petitioner must present evidence to show that she and her spouse intended to establish a life together when they married and did not enter into the marriage to evade the immigration laws." Examining the legislative history of 8 U.S.C. § 1154(c), the BIA explained that Congress had focused on an alien's intent to use marriage as a vehicle to evade the immigration laws, and therefore "made the legality of the 'marriage,' the bona fides of the relationship itself, or the fact that the parties never received anything under the Act, irrelevant."

This Court should begin its analysis by referring to the BIA's acknowledgment in its decision that Congress' intent in passing the Act was to make "the legality of the 'marriage' irrelevant" in and of itself. Courts have long recognized that for immigration purposes, the legal validity of the marriage is insufficient; instead, the parties must prove that the marriage relationship was genuine (i.e., bona fide). *See, e.g., Lutwak v. United States, 344 U.S. 604, 611, 97L. Ed. 593, 73 S. Ct. 481 (1953)* ("We do not believe that the validity of the marriages is material. The common understanding of a marriage is that the two parties have undertaken to establish a life together and assume certain duties and obligations").

It is in this sense that the legal validity of the marriage is not considered to be dispositive for immigration purposes: the parties must prove not only that the marriage is legally valid, but also that it is bona fide or genuine, in order for the beneficiary to be accorded preference status. *See Skelly v. INS, 630 F.2d 1375, 1382 (10th Cir. 1980)* ("When an alien goes through a [valid] marriage ceremony without ever intending to enter into a bona fide

marital relationship but solely to facilitate his receipt of a visa, the marriage for immigration purposes is deemed to have been fraudulent and invalid") *(quoting Kokkinis v. District Director of INS, 429 F.2d 938, 941 (2nd Cir. 1970)).*

Not surprisingly, in situations where the marriage is legally invalid, the beneficiary is not entitled to immediate relative status. *See Matter of Hoefflin, 15 I. & N. Dec. 31, Interim Decision 2306 (B.I.A. 1974)* (holding that where the petitioner's "mail-order" Mexican divorce was not recognized under state law, his marriage to the beneficiary was not valid for the purpose of conferring a preference classification on his spouse). It is perhaps for this reason that there are few cases such as the one sub judice, where the beneficiary of a genuine and legally valid marriage is charged, merely due to an unconstitutional inquiry, with entering into the marriage for the purposes of evading the immigration laws.

Fortunately, the Board of Immigration Appeals has considered this issue on at least one occasion. In 1974, the BIA considered a factually similar case in which the beneficiary, a citizen of Thailand, had married a lawful permanent resident in 1967 and was granted preference status on the basis of that marriage. *Matter of Samsen, 15 I. & N. 28, Interim Decision 2305 (B.I.A. 1974).* An immigration judge later ordered his grant of status rescinded due to the existence of an unspecified legal impediment which rendered his 1967 marriage invalid.

Based solely on this rescission, the District Director concluded that the beneficiary had entered into this marriage for the purpose of evading the immigration laws.

The BIA reversed, ruling that the District Director's decision was erroneous, since the record did not support a conclusion that the 1967 marriage was entered into for the purpose of evading the immigration laws. Notably, the BIA held that "the rescission determination dealt only with a legal impediment to the marriage; section 204(c) goes to the underlying

purpose of the marriage. A legally invalid marriage is not necessarily one which was undertaken for the purpose of evading the immigration laws." Thus, the BIA has expressly rejected the proposition that the legal invalidity of a marriage is, by itself, sufficient to support a finding that the marriage was entered into for the purpose of evading the immigration laws.

Finally, this Court will simply note in passing that a Sixth Circuit case appears to support the proposition that the legal validity of the marriage is not dispositive to a determination of whether the beneficiary intended to evade the immigration laws by entering into the marriage. In *Ferrante v. INS, 399 F.2d 98 (6th Cir. 1986),* the beneficiary's marriage to the United States citizen was arguably void because of his wife's existing common-law marriage. The Sixth Circuit, however, stated that the invalidity of the marriage "made little difference" in regard to a determination under § 1154(c):

Argument

Turning to my case, the issue is not, whether former wife and I presently have a bona fide marriage or have had a bona fide "relationship" throughout. Rather, the issue presented is whether former wife and I had entered into "marriage" for "the purpose of evading the immigration laws" and to obtain immediate relative status on my behalf on the basis of our marriage. The District Director concluded that my former wife's coerced admission that we entered into a bad faith marriage, under threat of criminal exposure from a USCIS examiner, presented an impediment to my current marriage and, due to the USCIS examiner's intimidation and the fear of losing her freedom, "eventually she lied under oath and concealed the existence of our bona fide marriage." After reviewing the marital evidence we had submitted which contradicted this conclusion. The USCIS stated its legal conclusion: "we find substantial and probative evidence in the record of an attempt to evade the immigration laws. Accordingly, the decision of the USCIS was affirmed when they deliberately failed to submit our appeal

to the BIA.

After reviewing the substantial evidence we had submitted and USCIS decisions, this Court will be firmly persuaded that although there is substantial evidence in the record that my former wife lied under oath to the USCIS examiner during our interview on September 17th, 2015, that we entered into a bad faith marriage, and arguably did so out of fear that she would be subjected to criminal exposure if she hadn't withdrawn her I-130 petition, there is little, if any, evidence that former wife and I married each other on June 27th, 2012, "for the purpose of evading immigration laws." In other words, although there is substantial and probative evidence in the record that my former wife had lied under oath that we entered into a bad faith marriage and probably did so in order to preserve her welfare benefits, there is a lack of substantial and probative evidence in the record that we married in order to evade the immigration laws. "*see Tawfik, Int. Dec. 3130 at 4. See, e.g., id.* (evidence that the parties were not living together and that the alien spouse was living with his first wife at the time of the denial of his second wife's petition was not "substantial and probative").

The dispositive issue before this Court is whether the statute's required that a petition be denied if there is substantial and probative evidence that my former wife was coerced to lie under oath that we "attempted or conspired to enter into marriage for the purpose of evading the immigration laws", but was contradicted by the marital evidence that we had submitted. Resolution of this issue will depend upon whether it is permissible for the USCIS to interpret 8 U.S.C. § 1154(c) to extend to those situations in which an alien, such as myself, entered into a bona fide marriage which, was motivated by genuine love for my former wife and was not a "sham" marriage within the meaning of the case law, but she was compelled by the USCIS examiner to lie under oath about the bona fides of our marriage, under threat of criminal exposure.

In the interest of reviewing all possible bases relied upon by the USCIS

to support this interpretation, this Court should determine the permissibility of such an interpretation whether it is based either on the mere fact that the District Director misstated the marital evidence of my former marriage, or solely on the fact that my former wife was coerced to lie under oath to the USCIS examiner about the bona fides of our marriage, out of fear that she would be subjected to criminal exposure if she had failed to comply. For the reasons given below, this Court will find that the USCIS's interpretation of § 1154(c) is not permissible under either of these rationales, both because it is inconsistent with the INS past interpretation of that law, and because it conflicts with the plain language of the statute and well-established interpretations of that language. Accordingly, since the USCIS's interpretation either misapplied the "correct legal standard" or applied the "wrong legal standard," depending upon the particular rationale, this Court will find that the USCIS abused its discretion when it denied our petition. *"Matter of Kitsalis, 11 I. & N. Dec. 613 (BIA 1966)."* (no fraud shown, but parties never consummated marriage or lived together, although both were in United States).

Although, the USCIS denial decisions did not clearly indicate their terms and conditions that compelled my former wife to withdraw her I-130 petition, and that her withdrawal was the basis of the USCIS's conclusion, that our marriage was entered into for the purpose of evading the immigration laws, the emphasis on that coercive interview tactics suggests this as a possibility. Accordingly, this Court should determine whether an interpretation of § 1154(c) as applying to our genuine (motivated by love and affection, undertaken to establish a life together and assume certain duties and obligations, i.e., bona fide) but was coerced and compelled to lie under oath that we entered into a bad faith marriage is a permissible construction of the statute. *"Matter of Jimenez- Lopez, 5 Immigr. Rep. B1-130 (BIA Nov. 25, 1987)"* (informal separation alone does not make marriage sham) "*See Matter of Matti, 19 I. & N. Dec. 43 (BIA 1984")*.

The admission of fraud by my former wife coerced by a USCIS examiner with respect to our marriage was given with intent to preserve her freedom, and cannot be used as dispositive evidence that we conspired to enter into marriage for the purpose of obtaining a non quota status on my behalf. It makes little difference then whether former wife and I presently have a bona fide marriage or have had a bona fide "relationship" throughout, unenforceable because my former wife was coerced to lie under oath. She had intended to use the act of lying to preserve her welfare benefits. Our intent is the essential element of the case. "*Matter of Kim, File No. A27 238 177, 5 Immigr. Rep. B1-62 (BIA Oct. 13, 1987)"* (unkempt marital apartment and fact that spouse had second apartment not enough to preclude finding of bona fide marriage)".

Based upon the foregoing, this Court will find that an interpretation of § 1154(c) to apply to my former marriage which was genuine though misguided, merely because my former wife was coerced to avow different intentions, but was contradicted both by case law and marital evidence holding that the bona fides of our marriage "makes little difference" to a determination under § 1154(c). Therefore, since this particular interpretation of § 1154(c) is neither consistent with the INS past decision nor persuasive in light of the case law, this Court will find that it is not a permissible construction of the statute. Instead, since the USCIS misapplied the correct legal standard, this Court will find that the USCIS abused its discretion in applying this interpretation. *"See also Cho v. Gonzales, 404 F.3d 96, 102–03 (1st Cir. 2005")* (emphasizing that marriages can be unconventional or can have various motivations without being sham marriages).

Next, this Court must analyze the scenario of my arguments, namely, that the USCIS's decisions relied upon, are justified by the fact that my former wife lied under oath to the USCIS examiner about the bona fides of our marriage, out of fear that she would be subjected to criminal exposure if she had refused the conditions. That is, this Court must determine whether it

is permissible, under the facts of this case, to interpret § 1154(c) as meaning that former wife and I who had entered into a genuine marriage and submitted an overwhelming marital evidence, but later she lied under oath to the USCIS examiner about the bona fides of our marriage at our interview on September 17th, 2015, because she was fearful and intimidated by the USCIS examiner.

In order to determine the permissibility of this interpretation, this Court must examine the meaning of the phrase "enter into marriage for the purpose of evading the immigration laws." As I noted, the well-established test for determining whether two parties entered into a marriage for the purpose of evading the immigration laws requires an examination of their intent at the time of the marriage: The "marriage is a sham if the bride and groom did not intend to establish a life together at the time they were married." *"Bark v. INS, 511 F.2d 1200, 1201 (9th Cir. 1975); accord Sinadinovski v. INS, 1996 U.S. App. LEXIS 22576, No. 95-3730, 1996 WL 435606, at *2 (6th Cir. 1996);United States v. Tagalicud, 84 F.3d 1180, 1185 (9th Cir. 1996); Matter of Soriano, 19 I. & N. Dec. 764, Interim Decision 3081 (B.I.A. 1988)* ("The central question is whether the bride and groom intended to establish a life together at the time they were married"); *Matter of Laureano, 19 I. & N. Dec. 1, Interim Decision 2951 (B.I.A. 1983).*

Since the inquiry is exclusively directed toward the parties' intent at the time of the marriage, the "conduct of the parties after marriage is relevant only to the extent that it bears upon their subjective state of mind at the time they were married." *Bark, 511 F.2d at 1202; accord Lee v. INS, 1993 U.S. App. LEXIS 29046, No. 92-70153, 1993 WL 441963, at *3 (9th Cir. 1993); Soriano, 19 I. & N.Dec. 764* ("The conduct of the parties before and after marriage is relevant to their intent at the time of marriage"); *Laureano, 19 I. & N. Dec. 1.*

Relevant post-marriage conduct may include evidence of children born of the marriage, joint purchases, joint ownership of property and joint tax

returns. *Sinadinovski, 1996 WL 435606* (relying upon the lack of this evidence to find that the marriage was not genuine); *Soriano, 19 I. & N. Dec. 764* ("Evidence to establish intent could take many forms, including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences"); *Laureano, 19 I. & N. Dec. 1.* This evidence is relevant because it reflects the genuineness of the marital relationship and therefore demonstrates the intent of the parties, at the time of their marriage, to enter into a bona fide marital relationship.

In sum, the determination of whether two parties entered into marriage "for the purpose of evading the immigration laws" relies exclusively upon the intent of the parties at the time of the marriage. Post-marriage conduct is relevant only insofar as it bears upon the subjective intent of the parties when they entered into the marriage.

In the case sub judice, there is substantial evidence in the record which indicates that at the time of my former marriage from June 27th, 2012, to October 5th, 2016, that we "intended to establish a life together." *Bark, 511 F.2d at 1201.* For example, former wife and I celebrated our wedding anniversary on the date of our marriage on June 27th, 2012, and have had jointly filed tax returns, joint bank account statements, jointly held leases or deeds, joint insurance policy, wedding photographs, miscellaneous receipts from wedding expenses, medical records showing next of kin, utility bills in our joint names, since that date. In addition, we have been trying to conceive a child for several years and have undergone testing and treatment in this regard. Indeed, this Court will expressly recognize that this evidence cannot be said to fall far short from "clear and convincing evidence" that former wife and I had married out of genuine love for each other.

Despite this evidence, however, the District Director apparently concluded that merely because my former wife was coerced by the USCIS

examiner to lie under oath about the bona fides of our marriage, the above-described test was not met, and the USCIS examiner's coercion of my former wife to lie under oath cannot be used as a dispositive evidence that our marriage was a "sham," i.e., we did not intend to establish a life together. The issue before this Court, therefore, is whether it is permissible to construe § 1154(c) so as to apply to my former marriage in which the only evidence of the alleged fraudulent nature is that my former wife admitted that our marriage was a sham. "See *Neufeld Memo, supra note 36, at 2–3*. For more on what an immigration adjudicator should do to determine that the underlying marriage was entered in good faith, see supra § 42.04

Resolution of this issue turns upon whether it is reasonable to rely solely upon such evidence in order to determine the intent of the parties at the time of their marriage, which is the gravamen of a finding under § 1154(c). In other words, the issue is whether it is reasonable to conclude that this evidence that my former wife was coerced by a USCIS official to lie under oath about the bona fides of our marriage "bears upon our subjective state of mind at the time we were married. "*Bark, 511 F.2d at 1202.*

Under the facts of this case, this Court will find that the mere fact that my former wife was coerced by a USCIS examiner to lie under oath concerning the bona fides of our marriage does not bear, in any substantial manner, upon our subjective state of mind at the time we were married. Frankly, this Court will be at a loss to understand how a reasonable person could conclude, based solely upon the fact that my former wife was coerced by the USCIS official to lie under oath, because she was fearful that she would be subjected to criminal exposure, if she hadn't testified that we did not intend to establish a life together at the time of our marriage. Indeed, it appears to this Court that our concerted efforts in filing three I- 130 petitions and two interviews, though misguided were an indication of our previous desires to establish a life together.

The mere fact that my former wife was coerced by the USCIS examiner

to lie under oath about the legitimacy of our marriage simply cannot be considered as dispositive evidence, in and of itself, of an alleged lack of intent on June 27th, 2012, to enter into a genuine marriage. Accordingly, since this particular interpretation of § 1154(c) is not reasonable, this Court will decline to give it deference and instead will find that it is not a permissible construction of the statute. Instead, since the USCIS misapplied the correct legal standard, this Court will find that it abused its discretion in applying this interpretation.

Given the obvious unreasonableness of the foregoing interpretation, it will appear to this Court that the USCIS did not, perhaps, construe § 1154(c) in the manner that is suggested in these constitutional provisions; the inference of marriage fraud between former wife and I was insufficient to support a finding under "section 204(c) of the Act". Relying on an inference is inadequate because a finding of marriage fraud must be supported by "substantial and probative" evidence *"see Matter of Tawfik, 20 I. & N. Dec. 166, 168 (BIA 1990)".*

A reasonable inference does not rise to the level of "substantial and probative" evidence requisite to the preclusion of the approval of my former wife's spousal visa petition in accordance with section "204(c) of the Act."; *In re Hassim, 2006 Immig. Rptr. LEXIS 8346, 2006 WL 3922236, at *1 (BIA Dec. 28, 2006)".*

Inadequate evidence and negative inferences do not meet this standard. The BIA held that a finding of marriage fraud must be based on evidence that is "substantial and probative" of fraud. The BIA described the evidence as "substantial and probative," and did not rely solely on inference. Instead, this Court will find that the USCIS's actual reasoning process is reflected in their final conclusion, which quite tellingly left out some of the essential language of § 1154(c): "We find substantial and probative evidence in the record of an attempt to evade the immigration laws".

Specifically, this Court will find that the District Director did not,

ultimately, examine the issue of whether former wife and I intended, upon entering our marriage on June 27th, 2012, to evade the immigration laws. Instead, it appears from a fair reading of their decisions that the USCIS focused upon a very different inquiry, namely, my former wife testified that we entered into marriage to facilitate my permanent stay in the United States. That is, this Court will find that the agency did not actually base its decision upon our' intent at the time of our marriage, but rather concluded that my former wife's admission of a fraudulent marriage coerced by the USCIS official, and our concerted efforts in three I-130 petitions and two interviews, in and of themselves, were an attempt to evade the immigration laws.

Assuming that this was, indeed, the agency's rationale, this Court will find that it was an abuse of discretion for the agency to fail to apply the correct legal standard, namely, a determination of our intent at the time of marriage in concluding that former wife and I entered into marriage for the purpose of evading the immigration laws, as set forth in 8 U.S.C. § 1154(c). Therefore, since the agency applied the wrong legal standard, this Court will find that it abused its discretion in applying this interpretation.

In sum, this Court should examine three different rationales for the agency's decision and will find that each of them constitutes an abuse of discretion:

First, assuming that the agency did not examine our intent at the time of marriage, but denied my former wife's petition by concluding that she eventually admitted that our marriage was a sham designed to help me get my citizenship, this Court will find that this interpretation of § 1154(c) is neither consistent nor persuasive, and is an impermissible construction of the statute. Accordingly, reliance upon this interpretation constituted misapplication of the correct legal standard and an abuse of the agency's discretion.

Second, assuming that the agency did not examine our intent at the time

of marriage, but denied my former wife's petition by concluding that former wife and I were interviewed multiple times and provided testimony with significant discrepancies, indicating a lack of bona fide marriage, this Court will find that this interpretation of § 1154(c) is unreasonable and is therefore an impermissible construction of the statute. Accordingly, reliance upon this interpretation constituted misapplication of the correct legal standard and an abuse of the agency's discretion.

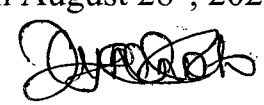
Third, assuming that the agency did not examine our intent at the time of marriage, but merely concluded that former wife and I concerted efforts in three I- 130 petitions and two interviews, though misguided, were an indication of our desires to establish a life together, in and of themselves, were an attempt to evade the immigration laws, this Court will find that the agency applied the wrong legal standard and therefore abused its discretion.

XI. CONCLUSION

For the foregoing reasons, I respectfully request that this Court issue a writ of certiorari to review the judgment of the First Circuit Court of Appeals.

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Respectfully submitted this on August 28th, 2024



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