No. 23-583

In the Supreme Court of the United States

AMINA BOUARFA,
Petitioner,

v.

SECRETARY, DEPARTMENT OF HOMELAND SECURITY, DIRECTOR, U.S. CITIZENSHIP & IMMIGRATION SERVICES (USCIS),
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 27, 2023
CERTIORARI GRANTED APRIL 29, 2024

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Complaint Seeking Review of Final Agency Action Pursuant to the Administrative Procedure Act, *Bouarfa v. Mayorkas*, No. 8:22-cv-00224-WFJ-AEP (M.D. Fla. Jan. 27, 2022), Dkt. No. 1 .... JA-1

Exhibit 1: Board of Immigration Appeals Decision relating to the Form I-130 (Dec. 1, 2021) JA-9

ITEMS PREVIOUSLY REPRODUCED

In accordance with Supreme Court Rule 26.1, the following items have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the Petition for a Writ of Certiorari (filed November 27, 2023):

Opinion of the United States Court of Appeals for the Eleventh Circuit, *Bouarfa v. Secretary, Department of Homeland Security*, 75 F.4th 1157 (11th Cir. 2023) 1a

Opinion of the United States District Court for the Middle District of Florida, *Bouarfa v. Alejandro N. Mayorkas*, No. 8:22-cv-224-WFJ-AEP, 2022 WL 2072995 (M.D. Fla. signed June 8, 2022 and docketed June 9, 2022) 12a

[Case 8:22-cv-00224-WFJ-AEP Filed 01/27/22]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Amina Bouarfa	X
Plaintiff,	X
	X
v.	X
	X
Alejandro Mayorkas,	X
Secretary,	X
Department of Homeland	X
Security;	X
Ur M. Jaddou, Director,	X
U.S. Citizenship and	X
Immigration Services,	X
Defendants.	X
____________________________	/

COMPLAINT SEEKING REVIEW OF FINAL AGENCY ACTION PURSUANT TO THE ADMINISTRATIVE PROCEDURE ACT

To the Honorable Judge of Said Court:

I. INTRODUCTION

This action is brought by Plaintiff to request that this Court exercise its authority to review a Form I-130, Petition for Alien Relative ("Form I-130"). This application was filed with U.S. Citizenship and Immigration Services ("USCIS") and was denied via a decision dated June 7, 2017. Plaintiff timely appealed the denial to the Board of Immigration Appeals. This appeal was dismissed on December 1, 2021.

II. PARTIES

1. That the Plaintiff, **Amina Bouarfa** is a citizen of the United States ("USC") and is married to Ala'a Hamayel (A 089-439-134), a native of the Palestinian Authority.
2. That the Defendant, **Alejandro Mayorkas**, is the Secretary of the Department of Homeland Security. Defendant Mayorkas is responsible for the administration and enforcement of the Immigration and Nationality Act in accordance with 8 U.S.C. §1101 et seq. Defendant Mayorkas is being sued in an official capacity.
3. That the Defendant, **Ur M. Jaddou**, is the Director of USCIS, an agency of the United States government involved in the acts challenged in this action. Defendant Jaddou is being sued in an official capacity.

III. JURISDICTION

4. That jurisdiction is conferred by 5 U.S.C. §704. Plaintiff is aggrieved by adverse final agency action in this case, as the Administrative Procedure Act requires in order to confer jurisdiction on the District Courts, 5 U.S.C. §§702 *et seq*.
5. That this is a civil action brought pursuant to 28 U.S.C. §§ 1331 and 1361 to redress the deprivation of rights, privileges and immunities secured to Plaintiff, by which jurisdiction is conferred, to compel Defendants to perform duties owed to Plaintiff.

6. That the aid of the Court is invoked under 28 U.S.C. §§2201 and 2202, authorizing a declaratory judgment.
7. That costs and attorney's fees will be sought pursuant to the Equal Access to Justice Act. 5 U.S.C. §504 and 28 U.S.C. §2412(d), *et seq.*

IV. VENUE

8. That venue is proper in Tampa, Florida, and the Tampa Division of the Middle District of Florida pursuant to 28 U.S.C § 1391(e) because Plaintiff resides in Hillsborough County, Florida, within the territorial limits of the Tampa Division.

V. REMEDY SOUGHT

9. That Plaintiff seeks to have this Court review Defendants' denial of Plaintiff's Form I-130 in accordance with the Administrative Procedure Act ("APA"). 5 U.S.C. §706.

VI. CAUSE OF ACTION

10. That Plaintiff is a citizen of the United States ("USC").
11. That Plaintiff is married to Ala'a Hamayel ("Ala'a"), a native of the Palestinian Authority.
12. That Plaintiff submitted a Form I-130 to USCIS on behalf of Ala'a seeking to accord him an immigrant visa as the spouse of a USC in accordance with 8 U.S.C. §1151(b)(2)(A)(i). This petition was received on April 1, 2014 and assigned receipt number LIN 14-904-65664.
13. That on January 6, 2015, Defendants approved the Form I-130.

14. That on March 1, 2017, Defendants issued a Notice of Intent to Revoke ("NOIR"). According to Defendants, Ala'a's prior marriage to a USC (Adriana Munoz) ("Adriana") was entered solely for the purpose of evading immigration laws.
15. That Defendants based the NOIR on a sworn statement taken from Adriana during an interview before USCIS relating to a Form I-130 that she had filed on behalf of Ala'a. Based on this sworn statement, USCIS concluded that "substantial and probative evidence" existed that Ala'a's marriage to Adriana was a sham. Accordingly, the approval of Plaintiff's Form I-130 was prohibited by law. *See* 8 U.S.C. §1154(c).[1]
16. That Plaintiff submitted a timely response to the NOIR and provided documentary evidence to rebut the information articulated in the NOIR. Plaintiff's evidence included a statement authorized by Adriana under penalty of perjury[2] in which she explained

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

[2] This statement was provided in accordance with 28 U.S.C. §1746, which provides, in pertinent part, that "[w]herever, under any law of the United States or under any rule, regulation, order,

that the aforementioned sworn statement taken of her during a USCIS interview was made under coercion and duress.

17. That on June 7, 2017, Defendants revoked the approval of Plaintiff's Form I-130. Defendants concluded that Adriana's second statement was unpersuasive and failed to undermine the probative value of the sworn statement she provided during her USCIS interview. Defendants concluded that Ala'a's prior marriage was entered solely for the purpose of evading the immigration laws and that Plaintiff's Form I-130 had been approved in error. Upon revocation of Plaintiff's Form I-130, Defendants entered a written decision denying the same.
18. That Plaintiff appealed the denial of her Form I-130 to the Board of Immigration Appeals.
19. That on December 1, 2021, the Board of Immigration Appeals dismissed Plaintiff's appeal.
20. That to obtain approval of a Form I-130, Plaintiff Amina must establish by a

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or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated…".

preponderance of the evidence that the beneficiary of said petition is eligible for the benefit sought.[3]

21. That to deny the Form I-130, the agency must have "substantial and probative evidence" that the alien entered into a marriage for purposes of evading the immigration law.[4]
22. That if the agency determines that it has the requisite "substantial and probative" evidence described in the paragraph above, the burden shifts to the petitioner to overcome said evidence.[5]
23. That Defendants denied Plaintiff's Form I-130 because USCIS believed that Ala'a married Adriana solely for the purpose of evading the immigration law.
24. That Plaintiff submits that the agency does not have "substantial and probative evidence" that Ala'a's marriage to Adriana was a "sham" entered solely for the purpose of evading the immigration law.[6] Rather, Plaintiff submits that the administrative record compels a contrary conclusion.
25. That the agency's December 1, 2021 decision is "final agency action." 5 U.S.C. § 702.

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[3] 8 C.F.R. § 103.2(b).

[4] 8 C.F.R. §§ 103.2(b)(16)(i); 204.2(a)(1)(ii); Matter of P. Singh, 27 I & N Dec. 598 (BIA 2019); Matter of Tawfik, 20 I & N Dec. 166, 167 (BIA 1990).

[5] Matter of Phillis, 15 I & N Dec. 385, 386 (BIA 1975).

[6] Matter of Phillis, 15 I & N Dec. 385, 386 (BIA 1975).

26. That Plaintiff has suffered a "legal wrong" within the meaning of APA §704. 5 U.S.C. §702.
27. That Plaintiff seeks the aid of this Court in reviewing "final agency action" pursuant to the APA and as discussed herein.
28. That Plaintiff's cause of action arises from administrative action wrongfully denied pursuant to the APA and Plaintiff seeks judicial review of the same pursuant to 5 U.S.C. §706(2).
29. That were the agency inclined to vacate its decision denying Plaintiff's Form I-130, Plaintiff invokes the aid of the Mandamus Act and the APA in compelling Defendants to adjudicate the Form I-130 consistent with applicable statutory provisions, regulations and policy guidance. Further, Plaintiff would request that the agency be required to adjudicate the reopened Form I-130 in a timely manner and based on Defendants' initial receipt of the Form I-130.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

1. Accept jurisdiction and maintain continuing jurisdiction of this action;
2. Conduct such hearings and examinations of Plaintiff as necessary to determine that the relief requested by Plaintiff is warranted as a matter of law;
3. Declare Defendants actions in the proceedings below as arbitrary and capricious, an abuse of discretion and not in

accordance with the law pursuant to 5 U.S.C. §706(2);

4. Were the agency to vacate its decision, Plaintiff would ask the Court to issue a preliminary and permanent injunction pursuant to 28 U.S.C. §1361 and 5 U.S.C. §706(1) compelling Defendants to adjudicate Plaintiff's Form I-130 within a reasonable period of time;
5. Were the agency to vacate its decision, Plaintiff would ask the Court to issue a writ in the nature of mandamus, pursuant to 28 U.S.C. §1361 and 5 U.S.C. §706(1), compelling Defendants to adjudicate Plaintiff's Form I-130 within a reasonable period of time;
6. Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 28 U.S.C. §2412;
7. Grant such other relief as this Court may deem just and proper.

Respectfully submitted,

/s/ David Stoller /s/
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Documents in Support of Complaint

Amina Bouarfa v.
Alejandro Mayorkas, Acting Secretary,
Department of Homeland Security, *et al.*

Exhibit 1: Board of Immigration Appeals Decision relating to the Form I-130 (December 1, 2021).

EXHIBIT 1

[Seal omitted]

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

LEWIS, NEIL F
NEIL F. LEWIS, P.A.
505 E. JACKSON ST.
STE. 213
TAMPA FL 33602

DHS/CIS – TAMPA, FL
5629 HOOVER BLVD.,
SUITE 176
TAMPA FL 33634

Name: HAMAYEL, ALAA EID

A 089-439-134

Date of this Notice: 12/1/2021

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

/s/ Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:

Userteam: Docket

Creppy, Michael J.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF: Alaa Eid HAMAYEL, A089-439-134 Beneficiary Amina BOUARFA, Petitioner	**FILED** DEC – 1 2021

ON BEHALF OF PETITIONER: Neil F. Lewis, Esquire

ON BEHALF OF DHS: Leslie E. McNamara, Associate Counsel

IN VISA REVOCATION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Tampa, FL

Before: Creppy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Creppy

CREPPY, Appellate Immigration Judge

The petitioner appeals from the Field Office Director's (Director) June 7, 2017, amended decision revoking the approval of the visa petition that was filed on behalf of the beneficiary as the spouse of a United States citizen. The Department of Homeland Security, U.S. Citizenship and Immigration Services

(USCIS) opposes the appeal. The appeal will be dismissed.

We review all questions arising in appeals from decisions of USCIS officers de novo. 8 C.F.R. § 1003.1(d)(3)(iii).

Under section 205 of the Immigration and Nationality Act, 8 U.S.C. § 1155, the prior approval of a visa petition may be revoked for "good and sufficient cause." *Matter of Ho,* 19 I&N Dec. 582 (BIA 1988). Before a decision revoking the prior approval of a visa petition can be issued, a Notice of Intent to Revoke (NOIR) must be sent to the petitioner which states good and sufficient cause for issuing the notice and provides the petitioner an opportunity to rebut the grounds stated in the NOIR and present evidence in support of the visa petition. 8 C.F.R. § 205.2; *Matter of Estime,* 19 I&N Dec. 450 (BIA 1987). There is good and sufficient cause to revoke the prior approval of a visa petition if the evidence in the record at the time of the Director's decision, including any explanatory and rebuttal evidence submitted in response to the NOIR, warrants a denial because the petitioner has not sustained his or her burden of proof. *Matter of Ho,* 19 I&N Dec. at 589.

In the instant matter, the petitioner filed a visa petition on behalf of her husband. On January 6, 2015, the visa petition was approved. On March 1, 2017, the Director issued a NOIR. On June 7, 2017, she revoked the visa petition because she found that the beneficiary's prior marriage to a United States citizen was entered into solely for the purpose of evading immigration laws, and the instant visa petition was approved in error because the approval is prohibited under section 204(c) of the Act, 8 U.S.C. § 1154(c).

We have reviewed the record of proceeding, including the NOIR, the petitioner's response to the NOIR, the Director's decision, and the petitioner's contentions on appeal. Upon our de novo review, we agree with the Director that the revocation of the visa petition is warranted because the petitioner did not sufficiently rebut the derogatory information articulated in the NOIR regarding her conclusion that the beneficiary had engaged in a fraudulent marriage with his ex-wife.

The record supports the Director's determination that the petitioner is barred from conferring benefits on the beneficiary under section 204(c) of the Act. The section 204(c) bar applies because the record contains substantial and probative evidence of prior marriage fraud by the beneficiary. *See Matter of Tawfik,* 20 I&N Dec. 166, 167 (BIA 1990); 8 C.F.R. § 204.1(a)(1)(ii); *see also Matter of P. Singh,* 27 I&N Dec. 598 (BIA 2019).

The beneficiary and ex-wife received their marriage license on February 26, 2007, the day of the ex-wife's naturalization ceremony. The couple wed 3 days later on March 1, 2007, and divorced on February 13, 2008. The beneficiary's ex-wife executed a sworn statement stating her marriage to the beneficiary was fraudulent and that she asked the beneficiary for $5,000 before filing the visa petition on his behalf. This admission constitutes substantial and probative evidence that the beneficiary entered into his prior marriage for the purpose of evading the immigration laws. *See Matter of P. Singh,* 27 I&N Dec. at 610 (explaining that a beneficiary's prior spouse's statement to USCIS officers that the marriage was fraudulent was "direct evidence of fraud").

The Director reasonably found as unpersuasive the petitioner's explanation for the derogatory information, including the beneficiary's ex-wife's subsequently issued unsworn statement wherein she claimed she made the first statement under duress. *See generally Matter of D-R-,* 25 I&N Dec. 445, 455 (BIA 2011). Moreover, the petitioner did not provide evidence that would undermine the probative value of the beneficiary's ex-wife's first statement, and thus we find no error in the Director's finding that the petitioner failed to establish that the beneficiary's ex-wife's admission of a fraudulent marriage was the product of a threat. *See United States v. Chemical Foundation, Inc.,* 272 U.S. 1, 14-15 (1926) (noting the presumption of regularity supports the official acts of public officers, and in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties); 8 C.F.R. § 1003.1(d)(3)(i).

We also have considered the petitioner's arguments on appeal that the beneficiary's ex-wife's second statement is more persuasive than her first, but we find them unpersuasive. For example, the beneficiary's ex-wife explained in her first statement that she was upset about the lack of religious confirmation of the marriage because although she married the beneficiary to help him with his status, she had "some feelings for him" and "thought that he might start to like" her (Record of Sworn Statement at 2). In addition, the beneficiary's ex-wife explained that the beneficiary moved in with her after the marriage to "make [the marriage] believable," not because they had a bona fide relationship (Record of Sworn Statement at 2). We have considered both statements, and the record as a whole, and we find

persuasive the details in the beneficiary's ex-wife's original sworn statement to USCIS officials. *See Matter of P. Singh,* 27 I&N Dec. at 610 ("Although the beneficiary's wife has subsequently denied making this statement, her admission was recorded by Government officials in the course of conducting an investigation, and the petitioner has not overcome the presumption that such officials properly discharge their duties in good faith.").

We agree with the Director that section 204(c) of the Act bars approval of the instant visa petition because substantial and probative evidence in the record indicates that the beneficiary's prior marriage was entered into for the purpose of evading the immigration laws. Thus, there was good and sufficient cause to revoke the approval of the instant visa petition. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.