



U.S. Citizenship and Immigration Services

WRITTEN TESTIMONY

OF

DANIEL M. RENAUD

Associate Director, Field Operations

and

DONALD NEUFELD

Associate Director, Service Center Operations

and

MATTHEW EMRICH

Associate Director, Fraud Detection and National Security

U.S. CITIZENSHIP AND IMMIGRATION SERVICES
DEPARTMENT OF HOMELAND SECURITY

FOR A HEARING ON

“Vows for Visas: Investigating K-1 Fiancé Fraud”

BEFORE

SENATE COMMITTEE ON THE JUDICIARY

MARCH 15, 2017

10:00A.M.

226 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC

Chairman Grassley, Ranking Member Feinstein, and distinguished members of the Committee, thank you for the opportunity to testify at today's hearing. This testimony will focus on the role of U.S. Citizenship and Immigration Services (USCIS) in the interagency process for adjudicating nonimmigrant fiancé(e) petitions. USCIS will also discuss its efforts to combat marriage fraud more generally, including a general overview of the fraud referral process.

From the visa petition stage to post-entry applications for immigration benefits, USCIS works closely with the U.S. Department of State (DOS), other U.S. Department of Homeland Security (DHS) components, and other partners to ensure that those seeking to lawfully enter and remain in the United States are screened and vetted thoroughly at multiple points and by multiple agencies in accordance with laws and regulations.

Security and integrity are central to USCIS' mission. In the course of applying to enter the United States, being admitted, and gaining lawful permanent resident status, the fiancé(e) of a U.S. citizen will undergo four to five sets of comprehensive background and security checks. Each case is reviewed by multiple agencies. USCIS and our partners continually work together to enhance our tools and procedures for identifying those who threaten our homeland or attempt to gain benefits through fraud. For example, recognizing its potential value, USCIS is exploring an expansion of the use of social media as an additional vetting tool in the background and security check process.

Officer Training

All immigration services officers at USCIS must pass the Immigration Services Officer Basic Training Program (BASIC). The BASIC course consists of 25 training days totaling 200 hours. The program includes, among other subjects, immigration history and law (6 hours), benefit fraud and material misrepresentation (4 hours), specific immigration classifications (12 hours), interviewing (4 hours), burden of proof and standards of proof (2 hours), and national security (4 hours). Officers receive specific training in the definition of fraud as it relates to the Immigration and Nationality Act. Common types and indicators of fraud, including marriage-based and family-based fraud, are discussed throughout the curriculum. The training includes methods for identifying a wide range of fraudulent documents (7 hours) as well as articulating the fraud and referring the case to a USCIS Fraud Detection and National Security (FDNS) immigration officer. BASIC training is just the beginning as additional training is provided regularly to ISOs at their duty office to enhance and sharpen skills. For example credibility training was provided to all domestic field offices and plans are underway for additional specialized training relating to specific grounds of inadmissibility.

Marriage Fraud and the Fraud Referral Process Overview

Marriage fraud is a risk USCIS evaluates with any alien who seeks to acquire permanent resident status by marriage to a U.S. Citizen (USC) or Lawful Permanent Resident (LPR). Fraud may be perpetrated in some instances by colluding with a USC or LPR. However, in some instances, the USC/LPR petitioner may be unaware that he/she is participating in a marriage fraud scheme.

Under section 204(c) of the Immigration and Nationality Act a fraudulent marriage is one that is entered into "for the purpose of evading the immigration laws." Against this backdrop, USCIS

thoroughly reviews a number of factors when seeking to determine whether a petitioner and beneficiary have entered into a bona fide marriage or whether the marriage was entered into for the purpose of evading the immigration laws.

In particular, as part of each case review, USCIS will evaluate the probative value of documentary evidence and employ background checks and system checks to confirm identity and status information. For prospective immigrants adjusting status in the United States based on marriage, USCIS will interview the petitioner and beneficiary to determine whether the marriage is bona fide. Interviews may be conducted jointly or with the petitioner and beneficiary separately. USCIS will generally conduct a joint interview first, then move to a separation interview if needed to further clarify information. The review and interview do not focus on attempting to predict the future of the marriage, but whether the marriage was entered into in “good faith” and not in an attempt to evade immigration laws.

Cases with fraud indicators are referred prior to final adjudication to FDNS officers for administrative investigations. These investigations may include a site visit to verify whether the parties are sharing a residence and/or residing in the location identified on the immigration form. In FY 2016, FDNS officers conducted approximately 11,800 of these site visits. Of these site visits, nearly 8,800 were related to potential marriage fraud. Upon completion of their investigation, FDNS officers report their findings for use in adjudication. Under previous policies, if a case met certain criteria, USCIS would refer the case to U.S. Immigration and Customs Enforcement (ICE) for criminal investigation or possible removal proceedings.

The President’s Executive Order of January 25, 2017, entitled “Enhancing Public Safety in the Interior of the United States,” and the Secretary’s implementing guidance entitled “Enforcement of the Immigration Laws to Serve the National Interest” updated those policies. Moreover, the Executive Order and the Secretary’s guidance both defined as enforcement priorities those who “have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency.”

USCIS continues to work with ICE to align its policies to reflect this change.

A fraud denial in a marriage case may bar an alien from being approved for any future immigration petition, including petitions filed by a parent or a future spouse or an employer.

K-1 Visa Petition Overview

DHS and DOS both play roles in determining whether a foreign national fiancé(e) is eligible for a K-1 nonimmigrant visa and admitted to the United States. Family-based immigration generally requires a U.S. citizen or a lawful permanent resident to first file a petition with USCIS on behalf of a foreign national wishing to come to the United States. The foreign national may only apply to DOS for an immigrant or nonimmigrant visa once USCIS has approved the petition. Such is the case with fiancé(e), or K-1, nonimmigrant visas. Only a U.S. citizen is eligible to petition for his or her fiancé(e).

A U.S. citizen who wishes to bring his or her fiancé(e) to the United States begins the process by filing Form I-129F, Petition for Alien Fiancé(e), with USCIS. USCIS immigration services

officers review the Form I-129F and documents submitted in support of the petition. The evidence must show that both parties are free to marry; that they intend to enter into a bona fide marriage within 90 days of the fiancé(e)'s admission as a K-1 nonimmigrant; and that they have met in person within 2 years before filing the petition, subject in certain cases to a waiver that they have not met in person. USCIS conducts a background and security check for national security concerns, public safety risks, and other information on both the petitioner and the foreign national beneficiary.

In addition to reviewing whether basic statutory and regulatory eligibility requirements are met, officers also review security and background check results for potential applicability of the Adam Walsh Child Protection and Safety Act and the International Marriage Broker Regulation Act (IMBRA). These provisions restrict eligibility based on the petitioner's criminal history, and IMBRA also provides for disclosure of previous filings and the petitioner's criminal history at the time of the beneficiary's visa interview with DOS.

An approved Form I-129F means only that USCIS recognizes the claimed relationship between the petitioner and beneficiary—an approved petition in and of itself does not grant an immigration benefit. The approval does not permit the fiancé(e) to travel to the United States, nor does it grant any immigration status or guarantee that DOS will issue a K-1 nonimmigrant visa. Similarly, having a nonimmigrant visa does not guarantee that U.S. Customs and Border Protection (CBP) will admit the visa holder to the United States.

On approval of the Form I-129F, the fiancé(e) has four months within which to apply to DOS for a K-1 nonimmigrant visa. USCIS sends the approved petition to the DOS National Visa Center, which forwards it to the embassy or consulate where the fiancé(e) will apply for the visa. Generally, this is the embassy or consulate in the area where the fiancé(e) lives.

As part of its adjudication process, DOS ensures that the fiancé(e) is eligible for a nonimmigrant visa under the requested classification, and is admissible to the United States. DOS conducts background checks on the visa applicant, including fingerprints and checks of DOS systems and other interagency databases. A visa application interview is also conducted by a consular adjudicator.

If the visa is issued, the K-1 nonimmigrant visa holder must travel to the United States and seek admission at a port of entry within the validity period indicated on the visa. Inspection by CBP at a port of entry includes the capture of biometrics and all relevant systems queries for national security, criminal, and immigration information, verification of identity and travel documents, and an interview.

If admitted, the K-1 nonimmigrant visa holder has 90 days to marry the same U.S. citizen who filed the Form I-129F with USCIS. Admission on a K-1 nonimmigrant visa is based on that expectation. K-1 visa holders who fail to marry the petitioners within 90 days are not eligible to adjust status based on their K-1 status.

A K-1 fiancé(e) is eligible to apply for adjustment of status to lawful permanent resident (i.e., receive a Green Card) once lawfully married. Marriage to any other person cannot provide a basis for adjustment of status. During the adjustment of status process, USCIS again conducts

background and security checks on both parties, including fingerprint checks on the foreign spouse, and may interview both spouses.

If the applicant and petitioner have been married less than two years at the time of adjustment of status, the applicant is granted conditional permanent resident status, and the Green Card that USCIS issues will be valid for 2 years. During the 90 days prior to the Green Card's expiration date, the conditional permanent resident and the petitioning spouse must jointly file Form I-751, Petition to Remove Conditions on Residence, or the alien spouse must file Form I-751 with a request that the joint filing requirement be waived. The conditions must be removed or the conditional permanent resident will automatically lose lawful permanent resident status and be subject to removal from the United States. Here again, during the adjudication process, USCIS conducts another set of background and security checks and a fingerprint check on the foreign spouse, and may interview both spouses. If the conditional permanent resident fails to submit Form I-751, or if the petition to remove conditions is denied, the conditional permanent resident status will be terminated and the individual will be placed into removal proceedings.

The K-1 nonimmigrant process involves many points at which the government may detect fraud and other grounds of ineligibility. Before an individual is admitted on a K-1 nonimmigrant visa, he or she will undergo at least three sets of comprehensive background and security checks by USCIS, DOS, and CBP.

Fraud Detection Responsibilities

DHS and DOS each have fraud detection responsibilities as part of our respective roles in the visa and immigration process. USCIS' fraud detection activities include vetting both the petitioner and the foreign national beneficiary against law enforcement and national security lookouts and records.

USCIS reviews each petition to determine if the petitioner and beneficiary meet the statutory and regulatory requirements for approval. At the first step in the process, the beneficiary is usually outside of the United States. USCIS conducts background and security checks on the petitioner and beneficiary and uses the information to validate statements provided by the U.S. citizen petitioner, while also determining whether the admission of the beneficiary would present national security concerns or public safety risks. Also, if there is an indication that a petitioner may have a conviction for a specified offense against a minor, as defined in the Adam Walsh Act, USCIS will conduct an FBI fingerprint check of the petitioner.

If USCIS adjudicators find discrepancies when they review petitions and supporting documents, along with the results of background and security checks, they issue a Request for Evidence (RFE), Notice of Intent to Deny (NOID) or a Denial Notice. A NOID is issued when USCIS finds that there may be grounds to deny the petition, but affords the petitioner the opportunity to rebut derogatory information that may be unknown to him or her.

An RFE or NOID gives the petitioner a chance to provide additional evidence to attempt to resolve any discrepancies. If the discrepancies are not resolved, the adjudicator may deny the petition and/or refer the case to FDNS. An FDNS officer may conduct additional systems checks, initiate an administrative investigation, and/or coordinate with law enforcement and

intelligence partners. After the FDNS officer reviews the case, the case is returned to the adjudications unit for action. In previous years, USCIS has typically denied approximately 12 percent of Form I-129F petitions for all reasons, including fraud.

FDNS' mission is to enhance the integrity of the immigration system by identifying threats to national security and public safety, detecting and combating immigration benefit fraud, and removing systemic and other vulnerabilities. FDNS officers are located in USCIS service centers, the National Benefits Center, district offices, field offices, and asylum offices. FDNS officers are also located overseas and in other government agencies. In FY 2016, FDNS received over 45,000 referrals related to immigration benefit fraud.

In order to deny a petition on the basis of fraud, the fraud must be affirmatively substantiated. In cases where fraud has not been sufficiently substantiated, officers may still deny the case when the petitioner fails to establish eligibility by the preponderance of the evidence. If DOS discovers evidence of fraud or ineligibility at the time of a visa interview, DOS can return the petition to USCIS for further review and investigation of the petition. An approved I-129F petition is valid for four months. DOS will generally return petitions after four months have elapsed and the petition has expired unless DOS or USCIS revalidates the petition.

FDNS will refer cases to Immigration and Customs Enforcement (ICE) for criminal investigation. USCIS officers may also assist in presenting cases to the U.S. Attorney's Office for possible prosecution, both of foreign national beneficiaries and U.S. citizens and lawful permanent resident petitioners. USCIS, in coordination with our law enforcement partners, routinely assists investigations involving marriage fraud. In one recent case, for example, a Santa Fe Springs, CA, man pleaded guilty to a federal charge for posing as an attorney as part of an immigration fraud scheme involving Chinese nationals paying tens of thousands of dollars to marry U.S. citizens. The man and his daughter, who also pleaded guilty, are currently awaiting sentencing.

USCIS is committed to ensuring that immigration benefits only go to individuals who are eligible for them, and that those who break the law or threaten our homeland are held accountable. Every day, and across the country, USCIS works closely with DOS and the other DHS immigration components, as well as our many federal, state, and local partners to carry out our mission with integrity and professionalism.

USCIS appreciates the support and interest of this Committee in its efforts on these and other matters critical to the integrity of our immigration system and the work of our agency and DHS. We are happy to respond to your questions.