

HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOPHAT TES,
Plaintiff,

v.

UNITED STATES DEPARTMENT OF
STATE, et al.,
Defendants.

Case No. 2:17-cv-00175-RAJ
ORDER

I. INTRODUCTION

This matter comes before the Court on Plaintiff’s motion for summary judgment and Defendants’ cross-motion for summary judgment. Dkt. ## 39, 40. Having reviewed all papers filed in support of and in opposition to each motion, the Court **DENIES** Plaintiff’s motion for summary judgment and **GRANTS** Defendants’ cross-motion for summary judgment.

II. BACKGROUND

Sophat Tes, a naturalized U.S. citizen, seeks review under the Administrative Procedure Act (APA) of U.S. Citizenship and Immigration Services’s (“USCIS”)

1 revocation of three Form I-130 Petitions for Alien Relatives filed on behalf of his wife Pov
2 Chhoeun and her two daughters. By filing the I-130 Petitions, Tes sought to qualify
3 Chhoeun and her daughters for visas authorizing them to immigrate to the United States as
4 his “immediate relatives.” CAR 52.¹ USCIS initially approved the three I-130 Petitions
5 in 2015. CAR 52; RC_CAR 16; SC_CAR 16. In 2016, the State Department interviewed
6 Tes and Chhoeun twice at the U.S. Consulate in Phnom Penh. Dkt. # 34-1. Consulate
7 officers determined Tes and Chhoeun provided “widely discrepant answers” about key
8 aspects of their relationship, including the time period in which they met, their financial
9 transactions, their wedding and engagement expenses, and their intimacy. *Id.* Officers
10 specifically noted that Chhoeun testified that the couple “[knew] each other since 1998
11 because [they were] from the same village in Battambang province,” but Tes testified to
12 first meeting Chhoeun in 2009 and had not known her before that time. CAR 1296.
13 Chhoeun also told the State Department that \$700 was the greatest amount that Tes had
14 sent her, but Tes claimed he had sent more than double that, \$1,500, on several occasions.
15 *Id.* The two similarly diverged in their responses to money spend on their engagement and
16 wedding. CAR 1377.

17 The U.S. Embassy returned the visa petition because Tes and Chhoeun failed to
18 convince the consular office of a bona fide marital relationship. In April 2017, USCIS
19 issued a Notice of Intent to Revoke (“NOIR”) its prior approvals of the three I-130
20 Petitions. CAR 1396-98, 1400-02, 1404-06. The NOIR reasoned that the petitioner had
21 not shown that a valid marriage existed. CAR 1396-98. USCIS cited the specific
22 discrepancies between Tes and Chhoeun’s answers during their June 2016 State
23 Department interview as well as Chhoeun’s struggle during a 2014 interview to explain
24 when and why her romantic relationship with Tes began. *Id.* In July 2017, USCIS revoked

25 ¹ Citations to CAR refer to the Certified Administrative Record for beneficiary Pov
26 Chhoeun on file with the Clerk of Court. Dkt. # 22. The separate Certified Administrative
27 Records for Ms. Chhoeun’s daughters are refer to by their initials, RC_CAR __ and
28 SC_CAR __.

1 the I-130 Petition approvals. CAR 17-21; RC_CAR 10-11; SC_CAR 10-11.

2 In April 2018, USCIS re-opened the I-130 Petitions for reconsideration in light of
3 about 1,700 additional pages that Tes had submitted in June 2017 as evidence of his bona
4 fide marriage. CAR 11-12. The 1,700 pages included the following: (1) affidavits from
5 family members; (2) photographs; (3) money transfer receipts; and (4) call records. Tes
6 also submitted a letter of clarification regarding the 2016 interview and later provided
7 additional materials in June 2018. CAR 4, 1410. In July 2018, after considering the
8 additional documents, USCIS rendered its final decision revoking the I-130 Petition
9 approvals. CAR 3-6. USCIS found that the additional evidence did not “overcome the
10 inconsistencies” in 2016 interview responses, nor did it “point to where the answers to the
11 inconsistencies may be found.” CAR 5. This challenge to USCIS’s decision followed.

12 III. LEGAL STANDARD

13 Summary judgment is proper if the pleadings, discovery, affidavits and disclosure
14 materials on file show that “there is no genuine dispute as to any material fact and the
15 movant is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(a) & (c) (as
16 amended December 1, 2010). However, in cases challenging final agency action, a district
17 court’s role is different. *See, e.g., Occidental Engineering Co. v. INS*, 753 F.2d 766 (9th
18 Cir.1985). “[T]he function of the district court is to determine whether or not as a matter
19 of law the evidence in the administrative record permitted the agency to make the decision
20 it did.” *Family Inc. v. USCIS*, 469 F.3d 1313, 1315 (9th Cir. 2006).

21 Accordingly, the Court will only set aside an agency’s action if it is “arbitrary,
22 capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. §
23 706(2)(A), or if its factual findings are “unsupported by substantial evidence,” *Mester Mfg.*
24 *Co. v. INS*, 879 F.2d 561, 565 (9th Cir. 1989). An agency’s findings should not be set aside
25 under the APA’s deferential standard “unless the evidence presented would compel a
26 reasonable finder of fact to reach a contrary result.” *Id.* (quoting *Monjaraz–Munoz v. INS*,
27 327 F.3d 892, 895 (9th Cir. 2003), amended by 339 F.3d 1012 (9th Cir. 2003)). Even if

1 the Court comes to a different conclusion based on the record evidence, under the APA
2 standard, it may not “substitute its judgment for that of the agency.” *Friends of the*
3 *Clearwater v. Dombeck*, 222 F.3d 552, 556 (9th Cir. 2000).

4 **IV. DISCUSSION**

5 The revocation of an approved petition must occur for “good and sufficient cause.”
6 8 U.S.C. at § 1155; *Koth v. US Dep’t of Homeland Security*, 656 Fed.App’x 321 (9th Cir.
7 2016). The Court reviews USCIS’s revocation decision for abuse of discretion. *Id.*;
8 *Herrera v. U.S. Citizenship & Immigration Servs.*, 571 F.3d 881, 883 (9th Cir. 2009). The
9 factual question of whether the parties “entered into the qualifying marriage in good faith”
10 is reviewed for substantial evidence. *Damon v. Ashcroft*, 360 F.3d 1084, 1088 (9th Cir.
11 2004); *Bark v. INS*, 511 F.2d 1200, 1201 (9th Cir. 1975) (noting the central inquiry is
12 whether the couple intends to establish a life together at the time of their marriage).²

13 USCIS’s decision to revoke the I-130 Petitions cited four “matters” involving
14 testimony from Tes and Chhoeun during their 2016 and 2014 State Department interviews.
15 CAR 3-6. First, Tes and Chhoeun gave conflicting accounts of when they first met. She
16 said they met in 1998 and were “just friends and neighbors” until 2009. CAR 1396.
17 Chhoeun added that she met him “again” when he visited Cambodia from the United States
18 in 2009. *Id.* Tes claimed that they first met in 2009, when his mother introduced them: “I
19 never knew her before,” he testified. *Id.* Second, Chhoeun told the State Department that
20 Tes spent \$2,000 on engagement expenses and \$3,000 on wedding costs. CAR 4-5, 1396.
21 Tes gave a conflicting account, claiming that he spent only \$300 on the engagement and
22 \$1,000 (or \$1,500) on the wedding. *Id.* The third matter involved testimony about the
23 greatest amount of money that Tes had sent to Chhoeun at one time. CAR 4-5, CAR 1396.

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25 ² Tes argues extensively that, because marriage is a fundamental right, the revocation of an
26 I-130 petition must be subject to strict scrutiny, and the government must bear the burden
27 of proving the marriage is not bona fide. This argument has been explicitly rejected by the
28 Ninth Circuit and warrants no further discussion. *See Koth v. US Dep’t of Homeland*
Security, 656 Fed.App’x 321 (9th Cir. 2016).

1 She said it was \$700. *Id.* He said it was more than twice that, \$1,500. *Id.* The final matter
2 occurred during Chhoeun’s 2014 interview, during which USCIS claims that she was
3 unable to say when or explain why she loved Tes. CAR 5; CAR 1397. Later in the
4 interview, she claimed that it was in 2010 because he had sent money for her daughters to
5 study. *Id.* However, there was no evidence in the record that Tes had sent money to
6 Chhoeun in 2010.

7 USCIS found that the additional evidence submitted in response to the NOIR only
8 created fresh discrepancies. For instance, Chhoeun tried to clarify that when she claimed
9 to know Tes since 1998, she meant that she had “heard this name and have seen
10 sometime[s].” CAR 1412. USCIS found this explanation lacking because it contradicted
11 her 2016 interview testimony in which she claimed they had been “friends” before 2009.
12 CAR 4. Affidavits from his uncle, son, and wedding guests failed to resolve the
13 discrepancy. CAR 1427-28, 1430, 1434. USCIS also found that subsequent evidence of
14 their engagement and wedding expenses totaling \$3,000 contradicted their claim that the
15 wedding expenses came to \$4,500. USCIS likewise found the additional evidence had
16 little probative value in resolving the remaining two matters and ultimately determined that
17 Tes had not met his burden to establish the claimed benefit. CAR 4-5.

18 The Court concludes that USCIS did not act arbitrarily or capriciously in revoking
19 the I-130 petitions. The record shows that USCIS identified substantial and probative
20 evidence that called into question the legitimacy of the marriage. USCIS also found that
21 inconsistencies on key issues went unresolved even after taking new evidence into account.
22 Accordingly, the Court finds that USCIS’s determination that the record evidence failed to
23 show the marriage was bona fide is supported by the evidence. Even if the additional
24 evidence submitted by Tes permitted two interpretations of the facts surrounding Tes’
25 marriage to Chhoeun, the Court cannot say that it compels a contrary conclusion.

26 V. CONCLUSION

27 For the reasons stated above, the Court **DENIES** Plaintiff’s motion for summary

1 judgment and **GRANTS** Defendants' cross-motion for summary judgment. Dkt. ## 39,
2 40.

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4 DATED this 24th day of February 2020.

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7 The Honorable Richard A. Jones
8 United States District Judge
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