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Fraud and Misrepresentation in the INA

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Fraud and misrepresentation in the INA

Fraud or misrepresentation are explicitly mentioned in the following places in the INA:

- 8 U.S.C. § 1101(a)(43)(M)(i), defining as an “aggravated felony” an offense “involv[ing] fraud or deceit in which the loss to the victim or victims exceeds \$10,000.”¹
- 8 U.S.C. § 1101(a)(43)(P), defining as an “aggravated felony” “an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months....”
- 8 U.S.C. § 1101(f)(6) states that a person does not have “good moral character” if, during the qualifying period, s/he gave “false testimony for the purpose of obtaining any benefits under this chapter.”

¹ *Mowlana v. Lynch*, 803 F.3d 923, 929 (8th Cir. 2015) (“The Supreme Court recently clarified, however, that 8 U.S.C. § 1101(a)(43)(M)(i) ‘is not limited to offenses that include fraud or deceit as formal elements [but also includes] offenses that involve fraud or deceit—meaning offenses with elements that necessarily entail fraudulent or deceitful conduct.’”) (citing *Kawashima v. Holder*, 565 U.S. 478, 484 (2012)).

- 8 U.S.C. § 1154(c) prohibits approval of any relative visa petition “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.” The regulations require denial of the petition for 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,” and further provide that “it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy,” but require “the evidence of the attempt or conspiracy [to] be contained in the alien’s file.”²
- 8 U.S.C. § 1155 permits the AG to revoke an approved visa petition “at any time, for what he deems to be good and sufficient cause.” This is sometimes used when there is a finding that the alien obtained the petition through fraud or misrepresentation.
- 8 U.S.C. §§ 1158(b)(2)(A)(ii), 1231(b)(3)(B)(ii), and 8 C.F.R. § 1208.16(d)(2) make any alien convicted of a “particularly serious crime” ineligible for asylum and withholding of removal. Courts have included fraud (including marriage fraud) as a “particularly serious crime.”³
- 8 U.S.C. § 1158(d)(6) makes an alien whom the Attorney General has found to have “knowingly made a frivolous application for asylum” “permanently ineligible for any benefits” under the INA. “For purposes of this section, an asylum application is frivolous if any of its material elements is deliberately fabricated.”⁴
- 8 C.F.R. §§ 208.24 and 1208.24 authorize an asylum officer to terminate asylum or withholding of removal that was granted by the USCIS if, after

² 8 C.F.R. § 204.2(a)(1)(ii).

³ *Shahla v. United States AG*, 648 F. App’x 812, 818 (11th Cir. 2016) (per curiam) (unpublished) (dismissing appeal of the BIA’s application of the “particularly serious” designation to marriage fraud); *Yang v. Holder*, 570 F. App’x 381, 385 (5th Cir. 2014) (per curiam) (unpublished) (upholding BIA’s application of this provision to prior convictions for conspiracy to commit access device fraud and aggravated identity fraud).

⁴ 8 C.F.R. §§ 208.20, 1208.20; *see also Yousif v. Lynch*, 796 F.3d 622, 627 (6th Cir. 2015).

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