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U.S. Department of Justice  
Immigration and Naturalization Service

**identifying data deleted to  
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invasion of personal privacy**

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: 19 SEP 2002

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

[REDACTED]

**PUBLIC COPY**

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a hotel/restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. As required by statute the petition is accompanied by an individual labor certification approved by the Department of Labor. The beneficiary was previously the beneficiary of a Form I-130 ("Petition for Alien Relative"). The director denied the present petition on the basis that the beneficiary had utilized the Form I-130 in an attempt to conspire to enter into a marriage for the purpose of evading the immigration laws.

The petition was approved on May 16, 2000. The director stated that an investigation was conducted, and after consideration, the approval of the petition was revoked on October 2, 2001. The revocation was based on the finding that the beneficiary entered into a marriage for the purposes of evading the immigration laws.

The director stated, in pertinent part:

On September 12, 1996, the petitioner of a Form I-130, Petition for Alien Relative, filed on November 24, 1995, appeared for an interview conducted in accordance with the procedures enumerated in Stokes vs. INS No. 74 Civ. 1022 (S.D.N.Y.).

The interview included the beneficiary of the instant Form I-140, filed on September 29, 1999, and approved on May 16, 2000, and he was also the beneficiary of the above Form I-130 filed on November 24, 1995.

In the Stokes interview, several discrepancies arose between the petitioner's and the beneficiary's separate sworn statements.

The record shows that you have now divorced your USC wife and remarried your first wife.

The director further found that the beneficiary failed to inform the petitioner that he had filed another immigrant petition and that it was denied. The beneficiary answered no to the question asking if an immigrant petition was ever filed on his behalf.

On appeal, counsel argues that:

The INS has failed to establish fraud by clear and convincing evidence. Failure to meet a burden of proof in the approval of an I-130 after a Stokes interview is not the equivalent of establishing fraud. Nor, is remarriage to the first wife. The representation on the I-140 are the petitioners. Alien through his attorney attempted to notify INS of previous I-130 on learning of this while the petition was pending, and a substantial time prior to approval of the petition. The information was sent back, and unequivocal proof of this is in the record. The INS was (sic) failed to establish an intentional fraudulent misrepresentation, or materiality, since the initial petition does not bring the I-140 within Sec. 204 (c).

Counsel's argument is not persuasive. In the intent to revoke the director stated that:

Any new evidence submitted that is dated after the priority date of your petition has not been considered as per 8 CFR 103 cited above.

It appears that the Form I-140 was amended to reflect a yes answer to question under Part 4, that asks, HAS AN IMMIGRANT PETITION EVER BEEN FILED BY OR IN BEHALF OF THIS PERSON? The amendment was received by this office on October 29, 1999, but was apparently sent back to the petitioner when this office no longer had the petition.

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director in his decision to revoke the approval of the petition. The petitioner has not established eligibility pursuant to section 203(b)(3)(A)(i) of the Act and the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.