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U.S. Citizenship
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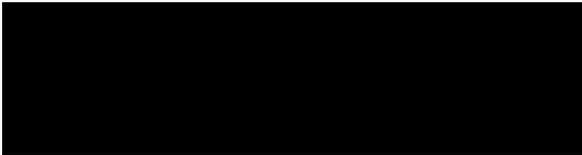
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. In connection with the beneficiary's Form I-130, Petition for Alien Relative, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a baker. The petition was filed for classification of the beneficiary under section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act) as a skilled worker. As required by statute, the petition was accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor (DOL).

The petitioner's Form ETA 750 was filed with DOL on January 5, 1998 and certified by DOL on February 24, 1998. The petitioner subsequently filed Form I-140 with CIS on March 13, 1998, which was approved on June 22, 2002. The beneficiary's application for lawful permanent residence (Form I-485) in connection with the approved Form I-140 was pending at the time the director issued the NOIR.

The approval of this petition was revoked as a result of the beneficiary's previous immigrant visa petition. A Form I-130, Petition for Alien Relative, was filed on the beneficiary's behalf on August 23, 1985. Concurrent with the filing of Form I-130, the beneficiary also sought lawful permanent residence and employment authorization as the immediate relative of a U.S. citizen. The file contains the completed forms, signed by the beneficiary, photographs, and a copy of a Certificate of Marriage between the beneficiary and Jacqueline Fernandez.

In connection with the Form I-130, the district director of the CIS office located in New York City issued an undated decision. The decision denied the Form I-130 because the petition had been withdrawn. The decision granted the beneficiary until March 10, 1986 to voluntarily depart the United States.¹ A memorandum in the file states that the processing of the beneficiary's status as a lawful permanent U.S. resident was terminated on October 28, 1985. No notice or correspondence was received from the beneficiary or a representative of the beneficiary to update or correct representations made on the Form I-130 or supporting documents. The Form I-140 was approved on January 22, 2002, and the beneficiary filed Form I-485 with supporting forms and documentation on March 14, 2002, which remains pending.

Section 204 of the Act governs the procedures for granting immigrant status. Section 204(c) provides for the following:

Notwithstanding the provisions of subsection (b)² no petition shall be approved if

(1) the alien has previously been accorded, or has sought to be accorded, an immediate

¹ While there is no statutory bar for failure to depart the United States under an order of voluntary departure for those orders initiated prior to 1996, this office considers such failure to be a negative factor that could impact any possible uses of CIS discretion.

² Subsection (b) of section 204 of the Act refers to preference visa petitions that are verified as true and forwarded to the State Department for issuance of a visa.

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 [director] to have been entered into for the purpose of evading the immigration laws or

- (2) the [director] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

In addition, 8 C.F.R. § 204.2, (a)(1)(ii) states:

Fraudulent marriage prohibition. Section 204 (C) of the act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of , or even prosecuted for , the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

On July 22, 2002, the director sent a Notice of Intent to Revoke (NOIR) to the petitioner stating the following:

A review of the beneficiary's A-File indicates that he has previously attempted to enter into a marriage for the purpose of evading immigration laws. This determination has been made based on the following facts:

On August 23, 1985, a petition for alien relative (Form I-130) was filed on behalf of the beneficiary by a United States citizen named [REDACTED]. That petition and a concurrently filed Application to Register Permanent Residence or Adjust Status (Form I-485) was denied because the I-130 petitioner requested to withdraw the visa petition. The petitioner submitted a written statement in which she stated that she was paid \$1,000 to marry the beneficiary in order to help him gain permanent residence status in the United States. The petitioner also stated that she and the beneficiary never planned to live together and that it was 'a marriage for Immigration purposes only.' [REDACTED] and the beneficiary failed to provide any credible evidence of their claimed marital status, nor did they appeal the denial of the Form I-130 petition.

In addition, a review of the beneficiary's Biographic Information Form G-325A, submitted in support of his pending I-485 (EAC-02-150-50386) indicates that he failed to disclose his claimed marriage to Jacqueline Fernandez.

The NOIR provided no further description of discrepancies contained in the beneficiary's records. The director requested that the beneficiary provide evidence to establish that the marriage between himself and [REDACTED] was not entered into for the purpose of evading immigration law. The director provided a list of documentation that could be provided, including leases showing joint tenancy of a common residence, records

showing commingling of financial resources, birth certificates of children born to the beneficiary and his wife, and affidavits of third parties having knowledge of the bona fides of the marriage relationship. The director stated that it was preferable that additional evidence submitted should be oldest available evidence rather than newly created.

The AAO notes that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The director's NOIR sufficiently detailed the evidence of the record, primarily the letter submitted by [REDACTED] asking that the petition be withdrawn, and the fact that the beneficiary did not reveal the prior marriage on his I-485 Form.

In response to the NOIR, the beneficiary provided a notarized affidavit in which he stated that he did not marry [REDACTED] to circumvent the immigration laws. The beneficiary stated that he married [REDACTED] because he loved her. He stated that they were married in Bronx, New York on August, 21, 1985 because she lived there at the time, and that afterwards they moved to Framingham, Massachusetts, because he worked there. He further stated that after their marriage, they decided to file for naturalization and legalization through New York because they had heard from friends that the process in New York was faster. The beneficiary further stated that within three months they returned to New York for an interview with immigration personnel. After Christmas and New Year's his wife stated that she missed her family and wanted to be with her friends. The beneficiary stated that they had arguments over her desire to return to New York, and that eventually she left the beneficiary and returned to New York. The beneficiary stated that he went to New York and found out that his wife was not living with her parents, but had become pregnant by an old boyfriend and was living in Amsterdam, New York. The beneficiary then stated he finally went to Amsterdam, New York, and found his wife with a baby on her lap. According to the beneficiary, his wife stated that she would file for a divorce in New York. The beneficiary stated that he did not declare his marriage to [REDACTED] Form G-325A because of oversight, and because the marriage was seventeen years ago and very short. The beneficiary stated that when he and his wife separated, he believed that the legal residency process was closed and unattainable. He abandoned the prior petition because he did not have the money to hire an attorney and did not understand the immigration laws. The beneficiary stated that he did declare the previous I-130 petition on his application for residency through the LULAC program. The beneficiary further stated that he contacted Alisa Realty regarding his and his wife's apartment lease, but that the company does not retain rental contracts that are more than seven years old.

The beneficiary also submitted three affidavits, one from his brother, and the other two affidavits from friends who also lived in Framingham, Massachusetts in 1985. All three letters detailed their contact with [REDACTED] and the beneficiary in Framingham, Massachusetts, during the holidays. The beneficiary's brother, [REDACTED] stated that he took his sister-in-law to the supermarket, laundry or doctor because she did not have a driver's license. [REDACTED] a friend, described how he had to move from the apartment in which the beneficiary lived in Framingham, after the beneficiary was married.

On September 19, 2002, the director revoked the approval of the I-140 petition. The director stated that the beneficiary had submitted no historical evidence to support his recently made statements, and that the evidence

submitted did not outweigh the reasons for revocation outlined in the NOIR.

On appeal, counsel for the petitioner states that the beneficiary did not enter into his marriage to [REDACTED] [REDACTED] for the purpose of evading immigration laws. Counsel further states that the marriage took place over 17 years ago, and that historical evidence has been impossible to locate. Counsel also states that the beneficiary has been unable to locate his former wife. The affidavits submitted on appeal are from the beneficiary, his brother, and a friend. All three affidavits expand on the information contained in their previous affidavits submitted in response to the director's NOIR. The beneficiary states in his affidavit that he has attempted to contact his former wife twice in recent months, to no avail.

The standard for reviewing section 204(c) appeals is laid out in *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). In *Tawfik*, the Board held that visa revocation pursuant to section 204(c) may only be sustained if there is substantial and probative evidence in the record of proceeding to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. See also *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972).

There is probative evidence in the record of proceeding to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. It should be noted that the sworn statement submitted by [REDACTED] that claims the beneficiary paid [REDACTED] to marry him, is dated October 28, 1985, slightly more than two months after the beneficiary and [REDACTED] were married. The submission of such a document would put into question many of the assertions made by the affiants with regard to holidays spent in the company of [REDACTED] in late 1985 and early 1986.

In addition, the district director's decision to grant the beneficiary voluntary departure until March 10, 1986, while undated, was mailed to the beneficiary and [REDACTED] [REDACTED] the same address identified on the initial I-485 petition as the residence of both the beneficiary and Ms. [REDACTED]. Although the affidavits submitted by the beneficiary and either relatives or acquaintances tell of contacts with the beneficiary's wife in Framingham, Massachusetts, the beneficiary has provided no substantive evidence of such residency. In evaluating the evidentiary weight to be given the affidavits submitted by the beneficiary, versus the CIS records, the AAO views the CIS records as much more probative. In addition, the beneficiary asserts that he omitted mention of his previous marriage on the current I-485 petition through oversight and because the marriage was so long ago, but that he claimed the previous marriage on his application for legal permanent residency through the LULAC program. The issue of when the beneficiary declared the previous marriage is not dispositive in this matter. First, the record does not contain any documentation with regard to the beneficiary's LULAC petition that would further substantiate this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the provision of information of a 1985 U.S. marriage in the context of the LULAC program would more reasonably be seen to establish the beneficiary's physical presence in the United States, rather than a prior marriage.

In summary, the record of proceeding contains evidence that a family-based immigrant petition was filed to obtain an immigration benefit for the beneficiary, and then withdrawn. We have no evidence that the marriage certificate is a fraudulent document. Thus, on the face of the document, a marriage occurred between the beneficiary and [REDACTED]

In addition, an independent review of the documentation in the record of proceeding presents substantial and probative evidence to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. Although the affidavits submitted by the petitioner contest the sworn statement of Ms. [REDACTED] there is no corroborative evidence in the record that would suggest the beneficiary's version of events is correct and the sworn statement is not correct. While the director's Notice of Intent to Revoke could have provided the entire contents of [REDACTED] letter and the date that it was written, the entire record was also available to the beneficiary, through the Freedom of Information Act procedures. In addition, the beneficiary appears to be knowledgeable of the fact that the I-130 petition was terminated in 1986, and made no attempt at that time or at any time up to the proposed revocation of the instant petition to rebut the withdrawal. Thus, the director's determination that the beneficiary sought to be accorded an immediate relative or preference status as the spouse of a citizen of the United States by reason of a marriage determined by CIS to have been entered into for the purpose of evading the immigration laws is affirmed.

ORDER: The appeal is dismissed. The approval of the employment-based immigrant visa petition is revoked.