

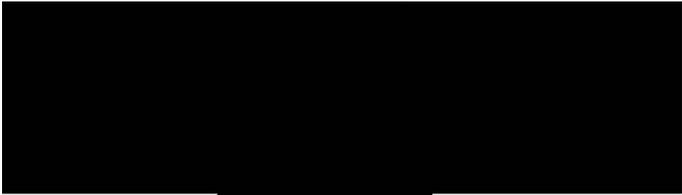


U.S. Citizenship  
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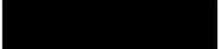
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Office: TEXAS SERVICE CENTER

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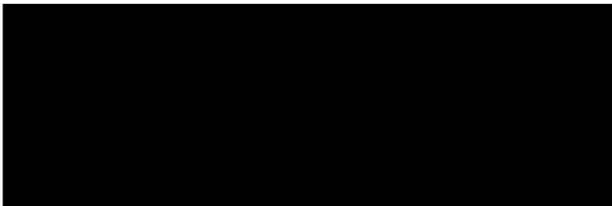
Petitioner:

Beneficiary:



PETITION: 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was denied by the Director, Texas Service Center, and came before the Administrative Appeals Office (AAO) on appeal. The AAO withdrew the director's decision and remanded the petition to the director. On remand, the director again denied the petition and certified the decision to the AAO. The decision of the director will be withdrawn and the petition will be remanded to the director for a consideration of the merits of the petition.

The petitioner is a liquor retail sales company. It seeks to employ the beneficiary permanently in the United States as a manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the beneficiary was ineligible for an immigrant visa approval because of section 204(c) of the Immigration and Nationality Act (the Act), pertaining to marriages entered into in order to evade immigration laws.

The procedural history of this case is documented in the record and is incorporated into this decision. Further elaboration of the procedural history appears below.

As set forth in the director's January 25, 2006 decision denying the petition, the single issue in this case is whether the evidence establishes that the beneficiary is ineligible for an immigration visa approval because of section 204(c) of the Act.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Employment-based immigrant visa petitions depend on priority dates. A petition's priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 23, 2001.

The AAO reviews appeals and certifications on a *de novo* basis. *See Dorr v. I.N.S.* 891 F.2d 997, 1002, n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including any new evidence properly submitted on certification.

In the instant certification, the petitioner submits no brief and no additional evidence.

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) [referring to adjudications of immigrant visa petitions] no petition shall be approved 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 [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 purposes of evading the immigration laws.

Act § 204(c).

Relevant facts and procedural events are as follows.

The beneficiary's former wife, [REDACTED] was born in Port au Prince, Haiti on October 15, 1965. (I-130 petition, Part B, Items 3 & 4).

The beneficiary was born in Ogwashi-Uku, Nigeria on February 21, 1968. (I-130 petition, Part C, Items 3 & 4).

The beneficiary entered the United States on October 20, 1985 at New York, as a visitor in the B1/B2 visa category. (Beneficiary's passport, at 9).

[REDACTED] became a permanent resident of the United States on September 10, 1986. (N-400 application, Part 3).

The beneficiary met [REDACTED] sometime in 1989 or 1990, when both were working for the same gas station company, at different store locations in the area of Miami, Florida. Details on the date of their meeting are among the discrepancies in evidence cited by the director, which are discussed below. (I-130 interview notes by district adjudications officer).

The beneficiary married [REDACTED] on March 25, 1992. (Marriage Certificate, March 25, 1992, Dade County Circuit Court, Florida).

Guerly Lindor became a U.S. citizen by naturalization on December 29, 1992. (Naturalization Certificate; N-445A Notice of Naturalization Oath Ceremony; I-130 petition, Part B, Item 13).

Ms. [REDACTED] filed an I-130 petition for alien relative on March 8, 1993. (I-130 petition). The beneficiary concurrently filed an I-485 application for permanent residence. (I-485 petition).

An interview on the I-130 petition was held at the Miami CIS district office on May 26, 1993. (Interview notes of District Adjudications Officer).

Following the interview, several field investigations were conducted by the district adjudications officer who had conducted the interview on the I-130 petition. (Memorandum of Investigation, October 11, 1994).

A notice of Intent to Deny (ITD) the I-130 petition was issued by the director on October 11, 1994. (Notice of Intent to Deny Visa Petition). The notice was addressed to the petitioner at her home address of record.

No response was received by the director to the ITD. Later investigation revealed that the petitioner's counsel had died on June 1, 1994. (Social Security Death Index Search Results, Web page, March 6, 2003).

The director denied the I-130 petition in a decision dated December 6, 1994. (Director's decision on I-130 petition). No appeal was taken from that decision.

The beneficiary's wife had a baby by another man in August 1995. The beneficiary moved out of the apartment he shared with his wife in 1996. (Affidavit of beneficiary, March 6, 2003).

The beneficiary and his wife divorced in 1998. (Affidavit of beneficiary, March 6, 2003).

An ETA 750 was filed on behalf of the beneficiary on April 23, 2001 and it was certified by the Department of Labor on July 12, 2002. (ETA 750).

The instant I-140 petition was filed on August 29, 2002. (I-140 petition).

In a decision dated February 4, 2003, the director denied the I-140 petition, under section 204(c) of the Act, on the ground that the beneficiary's marriage had been entered into in order to evade immigration laws.

The petitioning employer made a timely appeal of the director's denial decision.

In a decision dated April 20, 2005, the AAO withdrew the director's decision, and remanded the I-140 to the director to afford the petitioner the opportunity to provide evidence pertinent to the bona fides of the beneficiary's marriage and any other evidence the director might deem necessary. The AAO instructed the director to then issue a new decision, which, if adverse to the petitioner, was to be certified to the AAO.

The director issued a request for additional evidence (RFE) dated October 7, 2005, requesting further evidence that the beneficiary's marriage to the I-130 petitioner [REDACTED] was bona fide.

Counsel for the petitioner responded to the RFE with a letter dated December 29, 2005, accompanied by additional evidence. The petitioner's submissions in response to the RFE were received by the director on January 3, 2006.

In a decision dated January 25, 2006 the director again denied the I-140 petition under section 204(c) of the Act. The director then certified the decision to the AAO.

Evidence in the record relevant to the bona fides of the beneficiary's marriage which was submitted prior to the May 26, 1993 interview on the I-130 petition, or on the date of that interview, includes the following:

- a copy of a marriage certificate dated March 25, 1992 of the beneficiary and his wife, issued by Dade County Circuit Court, Miami, Florida;
- a copy of an apartment lease agreement dated May 1, 1992 of the beneficiary and his wife for an apartment at [REDACTED] Miami, Florida;
- a statement dated February 1, 1993 from [REDACTED] verifying that the beneficiary and his wife opened a jointly-held checking account on April 10, 1989;
- the first page of a NationsBank statement dated February 4, 1993 for a checking account of the beneficiary and his wife;
- a letter dated February 17, 1993 from a personnel manager at a [REDACTED] store in North Miami Beach, Florida, confirming the employment and address of the beneficiary's wife;
- a copy of an apartment lease agreement dated March 16, 1993 of the beneficiary and his wife for the [REDACTED];
- a Southern Bell bill dated April 22, 1993 in the name of the beneficiary at the [REDACTED] address; and
- an FPL electric bill dated May 5, 1993 in the name of the beneficiary's wife at the [REDACTED] address.

The record also contains copies of documents pertaining to the naturalization application of the beneficiary's wife, apparently photocopied from the wife's A-file. Those documents include the following:

- a copy of the N-400 Application for Naturalization of the beneficiary's wife, signed by her on February 15, 1992 and received by the CIS Miami district office on April 28, 1992; with further annotations apparently made at an interview on that application on November 10, 1992, signed by the beneficiary's wife and the CIS examiner on November 10, 1992;

- a copy of an N-445A Notice of Naturalization Oath Ceremony issued to the beneficiary's wife, for a Naturalization Oath Ceremony to be held on December 29, 1992;
- a copy of the reverse side of the N-445A, showing the answers of the beneficiary's wife to questions about events since her naturalization interview, bearing her signature and dated December 28, 1992; and
- a copy of the Naturalization Certificate of the beneficiary's wife, with an unreadable date on the photocopy.

The record also contains the interview notes taken by the CIS adjudication officer who conducted the interview of the beneficiary and his wife on May 26, 1993 pursuant to the I-130 petition and a VHS video recording of that interview.

The record also contains computer printouts of Social Security employment records of the beneficiary and his wife dated September 19, 1994, obtained by the CIS adjudication officer following the interview.

The record also contains a copy of an apartment rental application of the beneficiary and his wife dated April 29, 1992, obtained by the district adjudications officer during an investigative visit to the rental office for the apartment where the beneficiary and Ms. Lindor claimed to be living.

The district adjudication officer issued a subpoena to the K Mart corporation on August 18, 1994 seeking employment records of the beneficiary's wife relevant to her marital status, residence and other biographical information. In response to that subpoena, CIS received the following documents:

- a copy of an application for employment to the K Mart corporation by the beneficiary's wife dated July 25, 1992; and
- a copy of an undated employee record of the beneficiary's wife with K Mart corporation.

No further evidence relevant to the validity of the beneficiary's marriage was submitted until after the director had issued her decision dated February 4, 2003 in the instant I-140 petition denying the I-140 petition. In support of the petitioner's appeal in the instant I-140 petition of the director's decision the I-140 petitioner submitted the following documents:

- a copy of a Social Security Death Index Search Results dated March 6, 2003 for an Internet Web page of a genealogy Web site, showing verification on June 15, 1994 of the death of the attorney who had represented the beneficiary and his wife in the I-130 proceedings;
- an affidavit dated March 7, 2003 by the attorney of the I-140 petitioner stating her actions to confirm the death of the attorney on the I-130 petition on June 1, 1994;
- an affidavit dated March 3, 2003 by [REDACTED] a former roommate of the beneficiary, stating his knowledge of the validity of the beneficiary's marriage to [REDACTED];
- an affidavit dated March 6, 2003 by [REDACTED] a friend of the beneficiary, stating his knowledge of the validity of the beneficiary's marriage to [REDACTED];
- an affidavit dated March 6, 2003 by [REDACTED] a brother of [REDACTED] stating his knowledge of the validity of his sister's marriage to the beneficiary;
- an affidavit dated March 6, 2003 by [REDACTED] the mother of [REDACTED], stating her knowledge of the validity of her daughter's marriage to the beneficiary;
- an affidavit dated March 6, 2003 by [REDACTED] stating details of her marriage to the beneficiary and offering explanations for the evidentiary discrepancies cited in the director's notice of intent to deny (ITD) the I-130 petition;

an affidavit dated March 6, 2003 by the beneficiary, stating details of his marriage to Guerly Lindor and offering explanations for the evidentiary discrepancies cited in the director's ITD for the I-130 petition.

Following the AAO decision of April 20, 2005, which remanded the I-140 petition to the director, the director issued an RFE dated October 7, 2005. In response to the RFE, the I-140 petitioner submitted the following documents:

- a copy of an undated photograph of the beneficiary and his wife;
- a copy of the Florida driver's license of the beneficiary's wife issued March 25, 1993, in her married name;
- a copy of the first page of a NationsBank statement dated April 6, 1993 for a checking account of the beneficiary and his wife; and
- additional copies of documents submitted previously for the record.

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).

The record includes a videotape of an interview held at the CIS Miami district office May 26, 1993 on the I-130 petition submitted by the beneficiary's wife (now former wife), [REDACTED]. Many of the alleged evidentiary inconsistencies cited by the director of the Miami district office occurred in testimony given at that interview. The record also contains the interview notes by a District Adjudications Officer who conducted that interview. On appeal, the AAO has not relied exclusively on the officer's notes, but has viewed the video of the interview, which is of good quality and which therefore permits a review of the actual questions asked and the answers given during that interview. As part of the AAO review, the AAO has prepared its own interview summary notes. Those notes have been prepared for the convenience of reviewing officials on certification and they are not evidence in the record. The AAO notes will therefore be filed on the non-record side of the file. Citations below to those notes are intended as aids to locating the corresponding sections of the video tape, which is evidence in the record.

The video tape shows that an attorney for the petitioner was present during the interview on the I-130 petition, though the attorney is not within the camera sight during most of the interview. The camera sight includes the beneficiary and his wife. The interviewing officer and the attorney are seen only briefly on the video, when they move in front of the camera, and their faces never appear in the video.

The video shows that the beneficiary and his wife were both questioned together at the beginning of the interview. The wife was then questioned alone. Following the questioning of the wife, the beneficiary was questioned alone. The wife was then questioned again, and was given an opportunity to explain inconsistencies between her testimony and the testimony of the beneficiary on certain points. The beneficiary was not given an opportunity during the I-130 interview to explain any inconsistencies between his testimony and that of his wife.

One inconsistency in the evidence in the record concerns information stated by the beneficiary's wife (now former wife) [REDACTED] at her interviews on her N-400 naturalization application. [REDACTED] signed the N-400 on February 15, 1992, at which time she was not married. The N-400 accordingly stated that she was unmarried (N-400 application, Part 5). The beneficiary and his wife married on March 25, 1992. The

N-400 was received by the CIS Miami district office on April 28, 1992, with no correction made concerning Ms. [REDACTED] marital status.

The Form N-400 shows that an interview was held on November 10, 1992. Check marks and annotations on the Form N-400 indicate that the interviewing officer went over the entire form with Ms. [REDACTED] and that she made no changes in the information as initially submitted. Most significantly, Part 5, for marital history, bears the notations "N/A" and "None," and is numbered as item number 2 of 6 items specifically covered at the interview. Ms. [REDACTED] and the examining officer each signed the N-400 in the block indicated for their signatures at the interview, and the examining officer dated that block November 10, 1992. The above entries show that Ms. [REDACTED] failed to state the fact of her marriage at her naturalization interview on November 10, 1992.

Ms. [REDACTED] again failed to state the fact of her marriage when she appeared for her naturalization oath ceremony on December 29, 1992. The back of the notice form for that ceremony contains seven questions, updating information on the N-400, and pertaining to any changes since her first interview on the N-400. The first of those questions asks if the applicant had married, or been widowed, separated, or divorced. Ms. [REDACTED] checked the box for "No" to that question, and to the other six questions. She signed the form and dated it December 28, 1992. Of course, it was literally true that she had not married between November 10, 1992 and December 29, 1992, since her marriage occurred on March 25, 1992. Nonetheless, Ms. [REDACTED] failure to correct her previous false assertion that she was still single as of her November 10, 1992 interview constituted a misrepresentation of her marital status as of the date of that interview.

When asked about those discrepancies at the interview on the I-130 petition, Ms. [REDACTED] stated that since she was not married when she submitted the N-400 application, she did not want to change the information when she was later interviewed on that application.

Although Ms. [REDACTED] statements at her November 10, 1992 naturalization interview were a misrepresentation of her marital status on that date, it is not clear from the record in the instant certification that that misrepresentation was material to the merits of her N-400 application. Nothing in the record indicates that Ms. [REDACTED] eligibility for naturalization depended on her marital status, as would be the case if she were seeking naturalization after only three years of permanent resident status obtained based on marriage to a United States citizen. On the N-400 form, Part 2, for Basis of Eligibility, she had checked block "a," stating that she had been a permanent resident for at least five years. Block "b" of Part 2 is to be checked if the applicant claims to have been a permanent resident for at least **three years and** to have been married to a United States citizen for those three years. In Part 3 of the N-400 Ms. [REDACTED] **states that she had become a permanent resident on September 10, 1986.**

The director's January 25, 2006 decision denying the petition mentions Ms. [REDACTED] misrepresentation at her naturalization interview about her current marital status as one of the grounds for finding her not credible as a witness.

The director's January 25, 2006 decision also mentions inconsistencies in testimony during the interview on the I-130 petition, and notes that those inconsistencies were detailed in the October 11, 1994 notice of intent to deny (ITD) that petition.

In the ITD, the director lists nine inconsistencies in the testimony of the beneficiary and his wife which arose during the interview on the I-130 petition. Many of the alleged inconsistencies in testimony cited in the ITD are in areas involving testimony and terminology open to various interpretations, such as when the beneficiary and his wife began dating regularly and when they first had a commitment to each other. Other inconsistencies, concerning the usage of a clock radio, are in areas where the questions appear to assume a

significant difference between the couple's practices on weekdays and on weekends, even though Ms. [REDACTED] testified that she often worked on Saturdays or Sundays. No testimony was elicited to establish whether the beneficiary also worked at times on weekends. Similarly, the officer's questions pertaining to which person was the first to normally read the Sunday paper appear to envision the Sunday paper as an important part of the couple's Sunday activities. The officer commented, "I am talking about a big fat paper, you can tell if it has been molested or read. Who read it first most of the time?" (AAO interview summary notes, at 9). Those comments ignore the testimony of the beneficiary that it would depend on who got up first and they ignore the testimony of Ms. [REDACTED] that she sometimes had to work on Sundays. Moreover, both witnesses testified that the paper was delivered for only a short time, about two months by Ms. [REDACTED]'s testimony, and less than a month by the beneficiary's testimony. At most, according to Ms. [REDACTED]'s testimony, only about eight issues of the Sunday paper would have been delivered during the two months they subscribed to the newspaper, and the beneficiary's testimony indicated an even shorter period of delivery of the newspaper.

One inconsistency about travel of [REDACTED] outside of the country related to a three-day trip she said she took to Haiti in January 1991, for her sister's wedding. The beneficiary testified to only one trip by her, in 1989 to Haiti to visit her father. The officer's questions on that point appear to assume that the beneficiary would know about each of Ms. [REDACTED]'s trips outside the country. This may be a reasonable assumption, since their testimony indicated that they that they were dating regularly by at least late 1990. However, there is no evidence that they were living together before they married. The couple were married in March 1992 and they testified that they moved in together into a new apartment in April 1992.

Another inconsistency pertained to a question on whether the couple spent the night together after their marriage, prior to moving into a newly-rented apartment together. Ms. [REDACTED] answered no to that question. The beneficiary stated they had spent the night together at his apartment after marriage, and on more than one occasion. When Ms. [REDACTED] was later asked about this inconsistency she was silent for long periods, and she did not respond. Her demeanor on the video recording indicates some emotional distress at the question. Earlier in the interview, the examiner had asked about the types of activities which she and the beneficiary did on weekends prior to their marriage, and she had given a response which included the general statement that they did the kinds of things that boyfriends and girlfriends do together. The officer's question later in the interview specifically concerned a one-week period after their marriage. Social norms presumably would create no reason for embarrassment about questions on their spending the night together during that period. But even assuming that Ms. [REDACTED] noted the restricted one-week time period covered by the officer's question, her reluctance to answer a question exploring the couple's sexual relationship provides little substantive and probative evidence that the marriage between Ms. [REDACTED] and the beneficiary was entered into for the purpose of evading immigration laws.

Aside from the inconsistencies raised by the testimony at the I-130 interview, the director's January 25, 2006 decision denying the I-140 petition mentions inconsistencies concerning dates on two lease agreements submitted in evidence. No questions were asked about those lease agreements during the interview on the I-130 petition. The ITD correctly notes that both of the lease agreements state an incorrect street address for the apartment covered by the lease, stating number [REDACTED] as the street address, whereas the other evidence in the record shows the street address as number [REDACTED]. One lease is dated May 1, 1992, covering the period from May 1, 1992 through April 30, 1993, and the other lease is dated March 16, 1993, for a lease term of May 1, 1993 through April 30, 1994. Both leases also state an additional occupant of the apartment who is named [REDACTED]. He is identified as a cousin of Ms. [REDACTED] on a job application dated July 25, 1992 which she submitted to the K Mart corporation.

The record contains an investigative report dated October 11, 1994 by the district adjudications officer who conducted the interview on the I-130 petition. The record also contains the officer's notes pertaining to the investigation. The report and notes show that the officer visited the apartments on 165<sup>th</sup> Street Road in Miami

where the beneficiary and his wife testified they lived together. The officer obtained a copy of the rental application for the couple's apartment, which shows the beneficiary as the applicant and Ms. [REDACTED] as his wife. That information is consistent with their testimony at the interview on the I-130 petition.

The investigative report and supporting notes make no reference to the street number on the two leases in evidence, which is [REDACTED]. As noted above, that street address is inconsistent with the other evidence in the record showing a street address of [REDACTED]. The name of the apartments on the leases is "[REDACTED]." On certification, the AAO made a search using an Internet search engine under the name [REDACTED] and with the city name of Miami. The search produced links to several public Web sites which show the address of those apartments as [REDACTED] Miami, Florida, 33169. One of those public Web sites contains numerous photographs of the apartments. The photographs show at least two large apartment buildings, plus two smaller buildings. A "virtual tour" feature of the Web site shows 360 degree views from two locations, and one of those views appears to show at least three large apartment buildings plus two smaller buildings. See Classified Ventures, LLC, *Apartments.com*, <http://www.apartments.com>, *select* Miami, Florida, *select* Apartment Search: Name, *search* "[REDACTED], Miami, Florida." (accessed May 23, 2006).

The information on the public web sites referring to the [REDACTED] appears sufficient to explain the street number of [REDACTED] on the leases in evidence, since that street number is the main address of the apartment complex. The existence of at least two large apartment buildings in the complex, and also of a third one also apparently in the same complex, suggests that the actual street addresses of the individual apartment buildings may differ from the main street address of the complex, which is [REDACTED].

The beginning date on the first lease of May 1, 1992. Ms. [REDACTED] testified that they moved into their new apartment in April of 1992. (AAO interview summary notes, at 2, 3, 4). She testified that after they got married, they moved into the new apartment together about a week later. (AAO interview summary notes, at 3). The couple's marriage certificate shows March 25, 1992 as the date of the marriage. Therefore the May 1, 1992 beginning date on the first lease is about one month later than the date on which Ms. [REDACTED] testified that she and the beneficiary moved into their new apartment together. Nonetheless, the apartment rental application obtained by the district adjudications officer during his field investigative visit to the apartment complex is dated April 29, 1992, which is consistent with Ms. [REDACTED]'s testimony that they moved in April 1992, even though the term of rental on the lease is stated as beginning May 1, 1992.

As noted above, the record contains a statement dated February 1, 1993 from a banking officer with NationsBank, of North Dade/Miami, Florida. The letter is a form letter, with information typed in blank underlined spaces by the signing official. The letter states as follows:

NationsBank

February 1, 1993

Immigration Dept.  
Miami, Fl

This letter is written at the request of  
Mr. [REDACTED] and [REDACTED]  
who established A checking  
at this Bank on April 10, 1989

The account shows a total balance as of this date:  
Thirty Six Hundred and Twelve Dollars 89/100 (\$3,612.89)

This letter is issued on behalf of our customer and without any  
liability on the part of this bank or any of its officers.

(Letter from [REDACTED], Banking Officer, NationsBank, February 1, 1993).

The date stated for the opening of the account, April 10, 1989, is nearly three years before the couple married, and is more than one year before the couple met for the first time, according to the testimony of Ms. [REDACTED]. The beneficiary had testified that they first met in 1990 or 1989.

The record contains no explanation for the apparent inconsistency concerning the date when the checking account was opened. No questions were asked during the interview on the I-130 petition about the February 1, 1993 letter from NationsBank. During the interview, the beneficiary was asked generally for any additional documentation to establish the validity of his marriage. Among the items retrieved by the beneficiary from his briefcase was a checkbook, which he offered to the interviewing officer. The officer declined to accept or to examine the checkbook, saying that he already had bank account information.

A possible explanation for the April 10, 1989 opening date for the account could be that the account was opened on that date by either the beneficiary alone or by his wife alone, and that the other person's name was later added to the account, so that both names appeared on the account as of the February 1, 1993 date of the letter. Since some of the language on the February 1, 1993 NationsBank letter is language preprinted on the form, that letter cannot be interpreted as a statement by the bank officer that the beneficiary and his wife opened the account jointly on April 10, 1989. Therefore the letter is not in fact inconsistent with the testimony in the record concerning the couple's relationship prior to their marriage in March 1992.

The NationsBank letter does not indicate the account number on the checking account. A bank statement from NationsBank dated February 4, 2003 for an account ending in the three digits [REDACTED] shows the name of the beneficiary and the name [REDACTED] on the account. The ending balance is \$3,486.65, a figure which is close to the balance stated in the letter of February 1, 1993, which is \$3,612.89, a fact which suggests that the letter and the bank statement pertain to the same account.

Balanced against the inconsistencies in the evidence are many points of consistency. At the interview on the I-130 petition, both witnesses answered consistently concerning where and how they met, the month and year when they moved into a newly-rented apartment, the fact that the couple's clock radio was owned by the beneficiary prior to the marriage, the fact that the newspaper subscription had expired two weeks prior to the interview, the fact that they had gone to church together prior to their marriage, the fact that they went together to see Ms. [REDACTED] brother play in a soccer game, and other facts indicating that they lived together in the same apartment. Moreover, evidence obtained by the district adjudications officer after the interview

from their apartment rental office corroborated their testimony of living in the same apartment, specifically, a copy of the rental application showing their status as husband and wife. In addition, employment records obtained under subpoena from the K Mart corporation, Ms. [REDACTED] place of work during her marriage, showed the beneficiary listed as her husband, providing further corroboration of their testimony and of other evidence.

The record also contains a copy of the Florida driver's license of the beneficiary's wife issued March 25, 1993, in her married name. That license is further corroboration of the testimony of the beneficiary and Ms. [REDACTED] about their marriage.

As noted above, the record also contains affidavits by the beneficiary and Ms. [REDACTED] as well as by Ms. [REDACTED] mother, a brother of Ms. [REDACTED] and two friends of the beneficiary. Each of those affidavits states that the marriage of the beneficiary and of Ms. [REDACTED] was a genuine one. In the affidavits by the beneficiary and Ms. [REDACTED] they each offer explanations for the inconsistencies cited by the officer in the ITD and in the January 6 decision denying the I-140 petition. Less weight can be given to affidavits from interested parties than to independent documentation. Nonetheless, the information in the affidavits tends to provide further support to help establish that the beneficiary's marriage to Ms. [REDACTED] was a genuine one, not for the purpose of evading immigration laws. Moreover, the explanations for testimonial inconsistencies offered in the affidavits by the beneficiary and by Ms. [REDACTED] are generally reasonable ones. The affidavits of the beneficiary and Ms. [REDACTED] mention an additional matter, concerning Ms. [REDACTED]'s pregnancy by a man other than the beneficiary during the time of their marriage. She gave birth to a child from that other relationship in August 1995, a date which indicates that the relationship existed in about December 1994, two years and nine months after her marriage to the beneficiary. Both the beneficiary and Ms. [REDACTED] state that those events led to the failure of their marriage. The beneficiary states that they separated in 1996 and that Ms. [REDACTED] filed for and obtained a divorce in 1998.

In the affidavits by the beneficiary and by Ms. [REDACTED] they each offer criticisms of their former attorney, who has since died. Their criticisms include his advice to proceed during the interview on the I-130 petition without interpreters in their native languages. On the video of that interview, each witness speaks in reasonably good English, with the English language ability of Ms. [REDACTED] appearing to be stronger than that of the beneficiary. At some points during the interview they each appear not to understand the officer's questions. Notably, when the beneficiary is questioned by the officer about when he and Ms. [REDACTED] first had a "commitment" to each other he says that he did not understand, and he answers only after his attorney rephrases the question as asking when they first became boyfriend and girlfriend. (AAO interview summary notes, at 6).

Although the inconsistencies in the record and the limited documentary evidence submitted in support of the I-130 petition might be sufficient grounds for a denial of the I-130 petition, the issue before us on certification is whether there is substantial and probative evidence that establishes that the beneficiary's marriage was entered into for the purpose of evading immigration laws. The Board of Immigration Appeals has stated that the standard of proof for section 204(c) of the Act is substantial and probative evidence to support a reasonable inference that the marriage in question was entered into for the purpose of evading immigration laws. *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). This standard of proof appears to be intended by the Board as a higher standard than preponderance of the evidence, which is the normal standard in visa petition matters. See *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1977); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

Considered as a whole, the evidence in the record in the instant I-140 petition does not constitute substantial and probative evidence that the beneficiary's marriage to [REDACTED] was entered into for the purpose of evading immigration laws. Therefore, the assertions of counsel and the evidence in the record are sufficient

to overcome the decision of the director concerning the applicability of section 204(c) of the Act to the instant I-140 petition.

Since the I-140 petition was denied on the grounds of section 204(c) of the Act, the director did not consider other issues relevant to the merits of the I-140 petition. Therefore, the petition must be remanded to the director for a consideration of such issues.

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 met that burden.

ORDER: The decision of the director is withdrawn. The petition is remanded to the director.