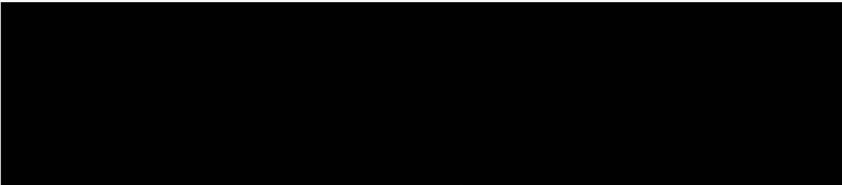




U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**  
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

*B6*



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **APR 16 2007**  
SRC 03 040 52379

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, revoked approval of the preference visa petition. The Administrative Appeals Office (AAO) remanded the matter. The matter is now before the AAO pursuant to a second revocation and certification by the director. The decision of the director will be affirmed. Approval of the instant visa petition will be revoked.

The petitioner is a beauty salon. It seeks to employ the beneficiary permanently in the United States as a hair salon manager. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the beneficiary had previously been found to have entered into a fraudulent marriage for the purpose of evading United States immigration laws and revoked approval of the petition pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c). The AAO found that the director had failed to notify the petitioner of the adverse evidence upon which he based his decision and remanded the matter for compliance with that requirement.

Section 204(c) of the Act states,

Notwithstanding the provisions of subsection (b) 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 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 record contains a Form I-130 Petition for Alien Relative filed by a United States citizen as petitioner. The beneficiary of the instant petition was also the beneficiary of that Form I-130 petition. In that Form I-130 the petitioner alleged that she and the beneficiary were married. That alleged relationship of the petitioner and the beneficiary as husband and wife was the basis of the petition in that matter.

The record also contains a statement dated November 17, 2000 and signed by the beneficiary's alleged wife. The beneficiary's alleged wife stated (1) that she married the beneficiary for the sole purpose of allowing him to remain in the United States, (2) that she was offered \$3,000 plus an unstated additional amount after the beneficiary obtained Legal Permanent Resident status, (3) that she had already received the \$3,000, (4) that she did not live with and never had lived with the beneficiary, and (5) that she was withdrawing her petition for the beneficiary.

Further still, the record contains a videocassette recording of the November 17, 2000 I-130 interview of the beneficiary and his ostensible wife.

On May 5, 2005 the Director, Texas Service Center, revoked approval of the instant petition based on the evidence in the record that the beneficiary had previously entered into a sham marriage for the purpose of obtaining an immigration benefit.

On appeal, counsel noted that the petitioner in the instant matter had not been informed of the adverse evidence prior to issuance of the decision revoking approval of the instant petition.<sup>1</sup> Counsel also alleged that the beneficiary and his ex-wife speak only Spanish, that an unqualified interpreter was assigned to translate for them, that they were asked to sign documents they did not understand, and that they felt pressure to sign them. Counsel also stated that despite a request pursuant to the Freedom of Information Act she had not been given a copy of the videotaped interview.

The Chief, AAO, found that pursuant to 8 C.F.R. § 205.2(b)<sup>2</sup> the director was obliged to issue a notice prior to revoking approval of the petition based on adverse evidence of which the petitioner might be unaware. Accordingly, the chief overturned the decision of revocation and remanded the matter to the service center.

On November 13, 2006 the Texas Service Center issued a Notice of Intent to Revoke in this matter. In that notice the director informed the petitioner that the service center intended to revoke approval of the instant petition pursuant to section 204(c) of the Act based on a determination that the beneficiary had entered into a fraudulent marriage.

The director accorded the petitioner 30 days to respond to that adverse evidence. The director found that the petitioner did not respond. On December 18, 2006 the director revoked approval of the petition again and certified the matter to the AAO.

In response to the notice of certification counsel indicated that she did respond to the notice of intent to revoke and resubmitted the documentation to the AAO. Counsel argued that the beneficiary's marriage was *bona fide*, that the evidence did not support a finding of fraud, and that neither she nor the beneficiary had received a viewable copy of the videocassette of the November 17, 2000 interview. On February 20, 2007 this office sent counsel a letter and a copy of the videocassette. The letter noted that the videotape shows that the beneficiary's ostensible wife or ex-wife speaks English fluently, that she understood the content of her signed statement, and that no undue duress was used to cause her to sign it. Counsel was accorded 30 days to respond to that adverse information. No response was received.

The evidence demonstrates that the beneficiary entered into a marriage for the purpose of evading immigration laws, and that he sought to be accorded an immigration benefit based on that fraudulent marriage. Approval of the Form I-140 petition was correctly revoked pursuant to section 204(c) of the Act.

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.

---

<sup>1</sup> Counsel observed that the decision of May 5, 2005 incorrectly identified the action taken as denial of the petition, whereas the decision revoked previous approval of that petition.

<sup>2</sup> The October 20, 2006 decision of the AAO incorrectly identified the governing regulation as 8 C.F.R. § 204.5(b).

**ORDER:** The director's decision of December 18, 2006 is affirmed. Approval of the instant petition is revoked.