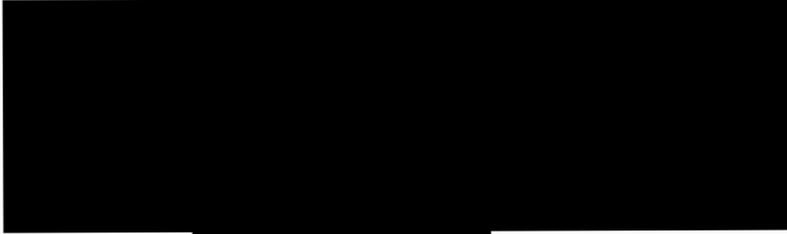


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U.S. Citizenship
and Immigration
Services



BL

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

FEB 23 2011

LIN 02 104 51774

IN RE:

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:



APR 10 2011

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 Director, Nebraska Service Center, revoked approval of the preference visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1155, provides that “[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988). A Notice of Intent to Revoke is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, 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. Matter of Esteime, 19 I&N Dec. 450 (BIA 1987). Notwithstanding Citizenship and Immigration Services' (CIS') burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

The petitioner is a motel. It seeks to employ the beneficiary permanently in the United States as a facilities planner. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the beneficiary is ineligible for the benefit sought due to marriage fraud under section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c) and, therefore revoked the petition's approval accordingly.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history of this case is documented in the record and is incorporated into this decision. Further elaboration of the procedural history will be made only as necessary.

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 nature, for which qualified workers are not available in the United States.

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 regulation 8 C.F.R. § 204.2(a)(1)(ii) states in pertinent part:

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 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. 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.

Section 212(a)(6)(C)(i) the Act states:

[Misrepresentation] IN GENERAL. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The subject CIS Form I-140 employment based petition is dated February 6, 2002. The labor certification was accepted for filing on April 18, 2001, the priority date of the petition.¹ The petition was approved on March 13, 2002. The director issued a notice of its intent to revoke the approval of the petition on July 12, 2005. Counsel submitted a response to the notice of the intent to revoke on September 26, 2005. The director issued a decision revoking the petition's approval on February 7, 2006. On March 9, 2006, the petitioner appealed the revocation.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal². Relevant evidence submitted on appeal includes copies of the beneficiary's, his spouse's, and his child's passports and I-94, Arrival/Departure Records; copies of the beneficiary's, his spouse's, and his child's B-2 non-immigrant entry visas stamped at the U.S. Consulate in Nairobi, Kenya; copies of the beneficiary's, his spouse's, and his child's Notice to Appear in removal proceedings under section 240 of the Act; a copy of an experience letter, dated April 22, 1995, from the Express Hotel; a copy of an experience letter, dated February 2, 1992, from the [REDACTED]; a copy of the beneficiary's marriage certificate, registered on June 2, 1992 with a marriage date of February 21, 1992 in India; copies of denial letters, dated July 6, 2004, for the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, filed on May 10, 2002 that included the beneficiary's spouse and the beneficiary's child; a copy of a handwriting analysis report, dated August 11, 2005, from [REDACTED] [REDACTED], Certified Forensic Document Examiner; a copy of a birth certificate for the beneficiary of the Form I-130, Petition for Alien Relative, submitted in 1996, with translation prepared in Urdu as the native language; a copy of a google.com printout pertaining to the place of birth as listed on the birth certificate prepared in Urdu; an affidavit, dated February 26, 2006, from the beneficiary; and a letter, dated February 26, 2006, from the president of the petitioner.

Other relevant evidence includes a copy of a birth certificate for [REDACTED] a copy of the beneficiary's birth certificate from India with a translation; copies of notes from the beneficiary's Form I-485

¹ The regulation at 204.5(d) states in pertinent part:

Priority date: The priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an individual labor certification from the Department of Labor shall be the date the request for certification was accepted for processing by any office within the employment service system of the Department of Labor.

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

interview; a copy of a Form I-485 filed on January 17, 1996 on behalf of the beneficiary with supporting documentation including a birth certificate for the beneficiary in Urdu, a copy of an I-94, passport, and Form I-693, Medical Examination of Aliens Seeking Adjustment of Status; a copy of a Notice of Intent to Deny (NOID), dated May 8, 1996, in regard to a Form I-130, Petition for Alien Relative; a copy of a marriage certificate, dated April 10, 1994, for the beneficiary and [REDACTED] Form I-130 filed on November 28, 1995 on behalf of the beneficiary by [REDACTED]; Form G-325, Biographic Information, for [REDACTED] in conjunction with the I-130; a denial notice, dated June 2, 2005, with regard to Form I-130; Form I-485, filed on May 10, 2002, with supporting documentation that includes Form G-325, a copy of the beneficiary's passport, a copy the beneficiary's Form I-94, a copy of the beneficiary's South Dakota driver's license, and a letter, dated May 27, 2004, from [REDACTED] at Super 8 Motel, the petitioner, and the beneficiary's Form I-693. The record does not contain any other evidence relevant to the issue of the beneficiary's prior fraudulent marriage.

In order to better understand how events in this proceeding transpired, the following timeline should be considered.

- Form I-140, LIN 02 104 51774, with a priority date of April 18, 2001, was filed on February 6, 2002.
- Form I-140, LIN 02 104 51774, was approved on March 13, 2002.
- Form I-485, LIN 02 196 50136, was filed on May 10, 2002.
- The beneficiary met with an adjudicator at the CIS district office in Bloomington, Minnesota for his I-485 interview on June 1, 2004. The beneficiary was informed that an I-130, EAC 96 046 52339, had been filed on his behalf by [REDACTED] an alleged U.S. Citizen, on November 28, 1995. The Form I-130 included an altered birth certificate for [REDACTED] and marriage certificate and a Form I-94, [REDACTED] indicating that the beneficiary entered the U.S. at New York City on September 26, 1994. The Form I-130 was eventually denied for fraud.

At the interview, the beneficiary claimed he was not a party to the alleged marriage fraud. He stated that he did not enter the U.S. before April 16, 1995, that he did not marry [REDACTED] and that he had never met her. The beneficiary also claimed that he did not sign the Form I-130, and in response to a Notice of Intent to Revoke (NOIR) the I-140, he submitted a report from [REDACTED] a Certified Forensic Document Examiner, who states that it appears the signatures are forgeries; however, since her determinations were arrived at based on copies of documents, she reserves the right to change her opinion.

The AAO has determined that the Consulate in India has no record of the beneficiary being issued a visa in 1994 and there's no record of the I-94, [REDACTED], or the beneficiary's arrival in SQ-94 (NIIS records). The AAO has also determined that a NOID was sent to [REDACTED] on May 8, 1996 but was returned due to an incorrect address. [REDACTED] listed her address as [REDACTED] Hicksville, NY 11801." The address does not exist. It has been determined that there is an [REDACTED] and a [REDACTED] and the town should have been "Hickville," not "Hicksville." The Form I-130 was denied on June 2, 2005 for fraud.

- On November 28, 1995, a Form I-485 was filed by “Akhilesh Trivedi” with the Form I-94, [REDACTED] included as evidence. It appears that this Form I-485 was never adjudicated.
- On March 20, 1995, the beneficiary, his spouse, and his child were issued B-2 visas at the U.S. Consulate in Nairobi, Kenya. It is noted that the Department of State (DOS) records verify this.
- On April 16, 1995, the beneficiary, his spouse, and his child entered the U.S. at Boston. (CIS records verify this.)
- CIS records show that on July 22, 1996, a Form I-765, Application for Work Authorization, (SRC 96 213 50047) was filed by the beneficiary based on (C)(9),³ Adjustment of Status. A Form G-28, Notice of Appearance as Attorney or Representative, was not submitted with the Form I-765. ***The only Form I-485 that had been filed prior to this date was the one filed on November 28, 1995 that was based on the Form I-130 that the beneficiary claims he was not a party to.*** The actual I-765 was destroyed in 2006; however, CIS records show the Form I-765 included the following information:

Date of Arrival: 4/16/1995 (The date the beneficiary claims is his actual date of arrival.)

Social Security Number: [REDACTED] (This is the SSN number from the SSN card the beneficiary claims is his. This SSN was not used on the previous Form I-130 or Form I-485.)

Form I-94 #: [REDACTED] (This is the Form I-94 number the beneficiary acknowledges he entered the U.S. on and CIS records verify it.)

- On February 6, 2002, Form I-140 (LIN 02 104 51774) was filed by Super 8 Motel, Sioux Falls, SD by its owner, [REDACTED]. The attorney of record is [REDACTED] from New York City. The personal information submitted with the I-140 for the beneficiary was the same as that submitted for the Form I-765 on July 22, 1996 (date of arrival, social security number, and Form I-94 number). See above. CIS records also show that the \$115.00 personal check used to pay for the submission of the Form I-140 was from [REDACTED] the beneficiary’s current spouse, and not from the petitioner.
- On March 13, 2002, the I-140 was approved.
- On May 10, 2002, the beneficiary filed a Form I-485 (LIN 02 196 50136) based on the approved I-140. Again, the attorney of record is [REDACTED], and the \$1,305.00 remittance consists of a personal check from [REDACTED] the beneficiary’s spouse.

³ The filing of the I-765 was based upon Adjustment of Status pursuant to 8 C.F.R. § 274a.12(c)(9).

- On May 10, 2002, the beneficiary filed a Form I-765 (LIN 02 196 50153) with [REDACTED] as his attorney, and the \$120 remittance was provided by a personal check from [REDACTED]. The Form I-765 was based on (C)(9), using the same information that was used on the prior July 22, 1996 Form I-765 (date of arrival, social security number, and I-94 number). *See above.*
- On July 14, 2003, the beneficiary filed a Form I-765 (LIN 03 220 55537) with Anil Shah as his attorney, and the \$175 fee was paid by personal check from the beneficiary. The Form I-765 was based on (C)(9) using the same information that was on the July 22, 1996 Form I-765 (date of arrival, social security number, and I-94 number).
- On July 6, 2004, a Notice to Appear (NTA) was issued for the beneficiary, his spouse, and his child for “being B-2 overstays.” At a hearing, the Immigration Judge requested an explanation, justification, and documentation from the beneficiary to establish that:
 - 1) “The allegation of the respondent’s involvement in the prior marriage is incorrect. This marriage considered a sham marriage by CIS and
 - 2) His employment based application for Adjustment of Status should be approved.”

The attorney of record, [REDACTED] has not presented a brief, but merely submitted a cover letter conveying the same affidavit from the beneficiary and the letter from the petitioner’s owner, [REDACTED] that was submitted to the AAO on appeal. It appears that the beneficiary requested voluntary departure before the Immigration Judge ruled on the validity of the I-130 marriage fraud.

- On July 12, 2005, a NOIR was issued for the I-140 based on the denial of the I-130 for marriage fraud. The NOIR was sent to the Super 8 Motel and to a new attorney at [REDACTED] Attorneys at Law, LLC.
- On October 19, 2005, the beneficiary filed a Form I-765 (SPM 06 060 00038) based on (C)(9) using the same information that was used on the July 22, 1996 Form I-765 (date of arrival, social security number, and I-94 number).
- On February 7, 2006, the I-140 was revoked.
- On March 9, 2006, the attorney of record ([REDACTED]) filed an appeal on the revoked I-140. Counsel submits a statement, a letter from the petitioner’s owner, and an affidavit from the beneficiary. Counsel’s statement merely indicates that he in enclosing the letter from the employer and the affidavit from the beneficiary, “which is self-explanatory.”
- The letter from the petitioner’s owner states:
 - 1) [CIS] has only alleged that the beneficiary has attempted or conspired to enter into a marriage. This is not yet established, it is still an allegation. The petition

filed in 1995 based on the marriage was denied ten years later in only 2005. The beneficiary is also not notified yet.

- 2) The I-140 petition is filed by our company. It is not filed by the beneficiary. Even if [the] beneficiary has attempted or conspired to enter into marriage, it should not have any affects on our petition. If [CIS] would like to deny the benefits to the beneficiary, it should deny his I-485 for Adjustment of Status. This alleged marriage of the beneficiary should have no bearing on our I-140 petition.
 - 3) If the beneficiary is found ineligible for Adjustment of Status, [it is] still our right to hire or substitute beneficiary for the approved application should not be trampled upon by revoking [the] I-140 petition for the alleged violation by beneficiary, [CIS] should not punish us.
- The affidavit provided by the beneficiary on appeal indicates that an “agent”, a non-attorney, took copies of his passport, photographs, and money and was to provide him with a social security number and a driver’s license, in order for him to obtain a job. The beneficiary also states that instead of the “agent” providing him with the social security number and driver’s license, the “agent”, unbeknown to him, used the photographs and copied his signature from his passport to fraudulently fill-in Immigration Forms. The beneficiary claims that the signatures on the I-130 and associated I-485 are not his signatures. The beneficiary further states that the birth certificate used for the beneficiary of the I-130 was prepared in Urdu which is not his native language and that it has a different name, place of birth, and parents than his correct birth certificate.
 - On December 4, 2006, the Immigration Judge granted the beneficiary voluntary departure until April 2007.
 - On February 2, 2007, the beneficiary filed a motion to reopen with the Immigration Judge for unknown reason(s).

On appeal of the employment based petition (the subject petition), the beneficiary indicates that his identity was stolen and that someone else used his information and filed the Form I-130 that was denied for marriage fraud. It is noted, however, that prior to the filing of the I-140, CIS has no record of anyone else using that name or date of birth to file for immigration benefits, with the exception of the Forms I-485 filed in 1995 and the I-765 filed in 1996. In addition, the beneficiary has not satisfactorily explained how or why he filed a Form I-765 in 1996 for work authorization under Adjustment of Status when the only I-485 that had been filed at that time was based on the Form I-130 that he claims no knowledge of and claims not being a party to. Furthermore, in his affidavit, the beneficiary indicates that in order for him to survive and to support his wife and child, he needed to work badly. However, the beneficiary did not begin to work for the petitioner until 2000 as noted on the Form ETA 750 and claims to have been unemployed from January, 1998 through May, 2000. The beneficiary does not explain how he survived between his entry in 1995 until he became employed by the petitioner in 2000, and he has not provided any evidence of tax returns, payroll checks, etc. to show that he was employed at any time during those years.

In his affidavit on appeal, the beneficiary states, “an anonymous agent took my passport copies, photographs and my little saved money to provide the same. Instead of providing me Social Security and Driver’s License he had, unknown to me, used my photographs and copied my signature from the Passport to fraudulently fill-

in Immigration Forms. The signatures on the forms are not my signatures.” The beneficiary does not mention his I-94 in this statement or explain how he obtained his social security card. Therefore, it is not realistic for the beneficiary to expect CIS to believe that he would voluntarily give that information to his “agent” (who failed to provide the documentation he needed) so that the 1996 Form I-765 could be filed with his correct social security number and correct I-94 number. If he was not a party to the filing of the I-130 and I-485 in 1995, there is no satisfactory explanation for the filing of Form I-765 in 1996 with his personal information being the same as shown for all subsequent petitions filed. It is noted that the beneficiary need not be in the United States at the time or even have met the alleged United States Citizen petitioner of the I-130 to be considered a party to the alleged marriage fraud. The beneficiary need only to have provided some of the documentation and to have known of the alleged marriage fraud, which would explain the filing of the I-765 in 1996.

In his affidavit, the beneficiary states that the report of [REDACTED], certified Forensic Document Examiner, “makes it clear that the alleged signatures on the application forms are not my signatures though it looks similar to my signature. . . .in addition, the Adjustment of Status application, commonly requires Birth Certificate of the Beneficiary. I had not provided my Birth Certificate to the agent indicating to him that Social Security Department, DMV does not require the same. As my Birth Certificate from India was not made available to him, he used some other person’s Birth Certificate prepared in Urdu as a native language.”

While the report from [REDACTED] does state that “based on the documents submitted and examined, it is my professional opinion that the signatures on the questioned documents identified as Q-1, Q-2, and Q-3 are not the genuine signatures of [REDACTED]. With regard to Q-4, this determination is inconclusive at this time,” it continues by stating the following:

This opinion is based solely on the documents listed as having been examined. Due to the limitations imposed in examining document copies rather than originals, this opinion is qualified and subjects to verification by examination of all original documents. Further, I was advised that the exemplars provided of K-1 through K-18 were the true signatures of [REDACTED] but have not verified this and take no responsibility for the truth of this statement. Upon examination of further evidence, I reserve the right to alter or change my opinion, if warranted.

Therefore, the beneficiary is incorrect when he states that it is clear that the alleged signatures are not his. [REDACTED], as stated, is unable to make a conclusive statement regarding the signatures without original signatures and without verifying the true signature of the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988) states: “Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.” *Matter of Ho*, 19 I&N Dec. at 591-592 also states: “It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.”

We find that the petitioner had not established that the beneficiary is eligible for the classification sought on the priority date of the visa petition.

We find that the director did explain the factual and legal basis why the petition's approval was revoked by providing factual information found in the record of proceeding and that the director communicated to the petitioner his findings.⁴

We find that the director demonstrated good and sufficient cause in revoking the approval of the petition. The beneficiary's reputed marriage to a United States citizen was a fraudulent marriage according to substantial and probative evidence found in the record of proceeding. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

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.

⁴ The petitioner's letter, dated February 26, 2006, states, "if the beneficiary is found ineligible for Adjustment of Status, [it is] still our right to hire or substitute [the] beneficiary for the approved application should not be trampled upon by revoking [the] I-140 petition for the alleged violation by [the] beneficiary, [CIS] should not punish us." The petitioner is mistaken. CIS is not punishing the petitioner by revoking the I-140. The petitioner has the freedom to petition for a new beneficiary as a substitute for the current beneficiary. However, the current I-140 may not be granted as it specifically states the beneficiary as the current beneficiary. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).