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[Redacted]

FILE:

EAC 03 143 51196

Office: VERMONT SERVICE CENTER

Date:

JUN 04 2007

IN RE:

Petitioner:

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:

[Redacted]

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, Vermont 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 Estime*, 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 car dealer. It seeks to employ the beneficiary permanently in the United States as a stock supervisor. As required by statute, the petition is accompanied by a copy of 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 partially 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 was filed by the petitioner on February 19, 2003. The labor certification was accepted for filing on April 19, 2001, the priority date of the petition.¹ The petition was approved on June 30, 2003. The director issued a notice of its intent to revoke (NOIR) the approval of the petition on September 2, 2004.² The director received counsel's response to the notice of the intent to revoke on October 1,

¹ The regulation at 8 C.F.R. § 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.

In the NOIR, the director informed the petitioner of the following:

The beneficiary married [REDACTED] on March 3, 1997 in Upper Marlboro, Maryland. On May 1997, Ms. [REDACTED] filed a Petition for Alien Relative (Form I-130) and the beneficiary filed an Application to Register Permanent Residence or Adjust Status (Form I-485). CIS interviewed the parties separately that same day.

The beneficiary was identified as being involved in a marriage of convenience during a CIS investigation of marriage fraud. In a subsequent investigation conducted by CIS, it was discovered that the beneficiary's wife had a separate checking and savings account to which her paychecks were deposited. A review of the lease for the apartment where the beneficiary and his wife were allegedly living showed that it was in the beneficiary's name only.

On May 18, 1999, agents went to [REDACTED] Baltimore, MD 21230 to speak with Ms. [REDACTED] (the new address was discovered as part of CIS' investigation). CIS confronted Ms. [REDACTED] with the evidence that the investigators had gathered, which indicated the couple was not living together. Ms. [REDACTED] told the agents that she and the beneficiary were not living together at the address listed above and that she was attempting to buy a house without the beneficiary. On May 30, 2000, the beneficiary's wife withdrew the I-130 petition she had filed for the beneficiary.

The fact that the beneficiary and his wife were not living together, his wife's separate checking and savings accounts, and the apartment lease being in the beneficiary's name indicates that the marriage may have been entered into solely as an avenue for which the beneficiary could obtain immigration benefits.

It was explained to the petitioner that any evidence it felt would overcome the reasons for revocation could be submitted along with documentation showing joint ownership of property, leases showing joint tenancy of a common residence, documentation showing commingling of financial resources, birth certificates of children

2004. The director issued a decision revoking the petitioner's approval on October 13, 2004.³ On October 27, 2004, 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 appeal.⁴ It is noted that although counsel appealed the director's decision on October 27, 2004, the AAO did not receive the appeal until May 1, 2007 as a result of multi-jurisdictional pleadings and issues associated with the record. Relevant evidence submitted on appeal includes counsel's brief; Form I-229, Warning for Failure to Depart; Form I-294, Warning to Alien Ordered Removed or Deported; Form I-340, Notice to Obligor to Deliver Alien; Form I-323, Notice – Immigration Bond Breached; a copy of Form I-352, Immigration Bond; a copy of Form I-305, Receipt of Immigration Officer – United States Bonds or Notes, or Cash, Accepted as Security on Immigration Bond; a copy of a dismissal issued by the Board of Immigration Appeals (BIA) regarding an application for adjustment of status; a copy of the Department of Homeland Security's (DHS) reply to the beneficiary's appeal from the decision of the Immigration Judge (IJ); a copy of the respondents' brief on appeal from the decision of the Immigration Judge; a copy of the respondents' motion to request an extension of time to file brief; a copy of a notice that the briefing extension request was granted; and a copy of the bench decision and order by the IJ. Other relevant evidence includes transcripts of the hearings conducted by the IJ for the beneficiary; a copy of the removal order for the beneficiary; a copy of a letter, dated November 1, 2004, from [REDACTED] Residential Systems Manager [REDACTED] Company, stating that the beneficiary was one of four lease holders on unit 101 at [REDACTED] Wheaton, Maryland 20902 from August 16, 1996 to September 24, 1997; copies of four checks in the beneficiary's

born to the marriage, and affidavits of third parties having knowledge of the bona fides of the marriage relationship.

³ The director noted that the petitioner's response to the NOIR contained affidavits from friends, former roommates, and former landlords, but that those affidavits had limited evidentiary value as there was no substantial corroborating evidence that the beneficiary and his spouse shared a life together. The director also noted that a former roommate of the beneficiary at [REDACTED] stated that he, the beneficiary, and another friend shared the three-bedroom apartment. The investigator assigned to the beneficiary's I-130/I-485 determined that the apartment was only a one-bedroom apartment and was listed in the beneficiary's name. The beneficiary's affidavit indicated that the apartment was rented by three people.

With regard to the beneficiary's divorce documents, the director noted that the divorce did not occur until five years after the beneficiary and his former spouse separated and that the beneficiary and his former spouse did not have joint debts or joint marital property. The director stated that although the beneficiary and his former spouse only lived together for approximately one year, that it is reasonable to assume that a bona fide marriage would have resulted in some joint assets in that time.

Finally, the director stated that the withdrawal of the I-130 petition on May 17, 2000 was the direct result of a sworn statement from the beneficiary's former spouse taken on May 18, 1999. Since the I-130 was withdrawn, the concurrently filed I-485 was denied. The director noted that the beneficiary, through counsel, claimed to have withdrawn the I-130 on or prior to November 2001. However, the beneficiary's former spouse had previously withdrawn the I-130 on May 17, 2000, and since the beneficiary of a petition is not eligible to withdraw a petition, the beneficiary could not have withdrawn the petition in November 2001.

⁴ 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).

name and his former spouse's dated in January 1998; a copy of Form 215W, Record of Sworn Statement in Affidavit Form, dated May 18, 1999, from the beneficiary's ex-spouse, [REDACTED] a letter sent to the beneficiary's ex-spouse, dated May 30, 2000, acknowledging [REDACTED] withdrawal of the I-130 she filed on behalf of the beneficiary; a letter sent to the beneficiary, dated May 30, 2000, informing the beneficiary that the immigrant visa petition filed on his behalf by [REDACTED] had been withdrawn; therefore, his Application for Permanent Residence was denied (a year before the beneficiary's attorney attempted to withdraw the application for adjustment on November 28, 2001); an affidavit from the beneficiary dated October 20, 2004; a copy of the beneficiary's passport; a copy of Form I-213, Record of Deportable Alien; a letter, dated August 7, 2003, from counsel requesting that the beneficiary be released from detention; a letter, dated June 4, 2001, from the beneficiary to Mr. [REDACTED] the attorney that represented him in the I-130 proceeding stating that since he and his wife had separated, he had obtained another attorney, [REDACTED] Mr. [REDACTED]; a copy of a letter, dated June 27, 2001, from Mr. [REDACTED] to Mr. [REDACTED] requesting the beneficiary's complete file; a copy of a cover letter, dated July 5, 2005, to the beneficiary's file to Mr. [REDACTED] from Mr. [REDACTED] copy of a letter, dated November 28, 2001, from Mr. [REDACTED] to Citizenship and Immigration Services (CIS) withdrawing the application for adjustment which was based upon marriage to a U.S. citizen, indicating that the marriage was terminated by divorce; a copy of a motion to reopen on deportation in absentia; a copy of Form I-862, Notice to Appear; a copy of Form I-648, Memorandum Record of Interview made in Examinations; a copy of a request for evidence regarding the Form I-130 issued by the Baltimore, MD District Director, dated June 12, 1998; and copies of Memorandums of Investigation, dated May 18, 1999 and March 2, 2000.⁶ The record does not contain any other evidence relevant to the issue of the beneficiary's prior fraudulent marriage.

⁵ The Form 215W, subscribed and sworn to on May 18, 1999, by [REDACTED] states:

Being duly sworn, I make the following statement:

I, [REDACTED], was married to [REDACTED] on March 3, 1997. I want to divorce him, and I wish to withdraw the petition I filed on his behalf.

⁶ The Memorandum of Investigation, dated May 18, 1999, states:

On May 18, 1999, Agents [REDACTED] and [REDACTED] went to [REDACTED] to speak with [REDACTED] the petitioner of a spousal I-130 filed on behalf of the above alien. Ms. [REDACTED] was informed of the significant amount of evidence which the agents had uncovered indicating that the petitioner and the above alien have not resided together as claimed. She told the agents that she does not live with the beneficiary, the above alien, and lives at the above address. She is attempting to buy a house without the beneficiary. The petitioner withdrew the petition she filed on behalf of the beneficiary.

The Memorandum of Investigation, dated March 2, 2000, states:

A review of the relating alien file finds that the subject is [a] citizen of the [REDACTED] who is the beneficiary of a pending I-130 petition filed on his behalf by his U.S. citizen spouse. The subject also has a pending I-485 petition. The subject is identified as [REDACTED] a native and citizen of the Ivory Coast who was born on June 18, 1973. The petitioner of the I-130 is [REDACTED], a U.S. citizen who was born on March 5, 1977 in the United States. Information has been received by Baltimore Investigations Section of CIS that the subject is involved in a sham marriage which was entered into to evade immigration laws.

On appeal of the employment based petition (the subject petition), counsel challenges both the revocation of the approved I-140 on the grounds that it was not done for good and sufficient cause and that the director's finding of marriage fraud on the grounds that the underlying evidence is absent. She also asserts that the director made erroneous factual determinations.⁷ Counsel states that "[t]he CIS does not allege Toyota Volvo's qualifications to meet the criteria for I-140 approval and the evidence of marriage fraud fails due to: 1) faulty and insufficient evidence contradicting the bona fides of the marriage, 2) ultra vires action,⁸ 3) common law laches,⁹ and 4) the sufficiency of Mr. [REDACTED] evidence of his intent at the time of marriage."

Visa petitions cannot be approved on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws, regardless whether any actual benefit was received. *See* section 204(c) of the Act, 8 U.S.C. § 1154(c); 8 C.F.R. § 204.2(a)(i)(ii) (2004). Visa petitions will be denied or revoked where there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether any actual benefit was received. *See* 8 C.F.R. § 204(a)(1)(ii); *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). Evidence of the attempt or conspiracy must be contained in the alien's file. *See* 8 C.F.R. §§ 103.2(b)(16)(i), 204.2(a)(1)(ii) (2004); *Matter of Tawfik*¹⁰, *supra*.

In the instant case, the AAO is not in agreement with counsel. As stated in *Matter of Tawfik*, visa petitions will be denied or revoked where there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether any actual benefit was received, and evidence of the attempt or conspiracy must be contained in the alien's file. In the decision of revocation, the director provides the following reasons for revoking the petitioner's Form I-140 based on the supposed-marriage fraud conducted by the beneficiary.

CIS received your response on October 12, 2004. The response contained affidavits from friends, former roommates, former landlords, and the beneficiary himself. The affidavits from

⁷ Counsel claims that the factual errors include: 1) First marital residence was not a one-bedroom apartment; 2) The taxes presented were not fraudulent, neither those of the beneficiary or the petitioner; 3) It is not unreasonable for a married couple who lived together for approximately one year to have settled all assets and liabilities within the five year period prior to divorcing; 4) The affidavits of a bona fide marriage are not unsupported by objective evidence; 5) There is no evidence that the beneficiary's ex-spouse withdrew the I-130 in a sworn statement on May 17, 2000; and 6) It is an error of law to unilaterally withdraw an I-130 on the petitioner's "wish" sworn to investigators. *See* 8 C.F.R. § 205.

⁸ *Black's Law Dictionary*, 1522 (6th ed. 1990) defines ultra vires action as an act performed without any authority to act on subject. Contrary to counsel's assertion, CIS has the authority to determine if an alien attempted to or entered into marriage to evade immigration laws, and based on such a determination, revoke the approval of an immigrant visa petition.

⁹ *Black's Law Dictionary*, 875 (6th ed. 1990) defines laches as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity. Counsel did not explain how this principle applies to this case.

¹⁰ *Matter of Tawfik* states that "in making a determination that a beneficiary's prior marriage comes within the purview of section 204(c) of the Act as a marriage entered into for the purpose of evading the immigration laws, the director should not give conclusive effect to determinations made in prior proceedings, but, rather, should reach an independent conclusion based on the evidence of record, although any relevant evidence may be relied upon, including evidence having its origin in prior Service proceedings involving the beneficiary or in court proceedings involving a prior marriage."

friends, former roommates, and former landlords were submitted to support the beneficiary's claims. These affidavits were found to be of limited evidentiary value because there was no substantial corroborating evidence establishing that the beneficiary and his former wife shared a life together. Such evidence would have included the listing of your former spouse on insurance policies, property leases, mortgages, income tax returns, and/or bank statements. It is noted that [REDACTED] an alleged former roommate of the beneficiary's [REDACTED] claims that he, the beneficiary and another friend shared the three-bedroom apartment. According to the Form I-648, the investigator assigned to [the] beneficiary's I130/I485 case found that the apartment had only one-bedroom and the lease was only in the beneficiary's name. According to the beneficiary's affidavit, the [REDACTED] was leased to three people.

The beneficiary's divorce documents were submitted as evidence. It is noted that the divorce occurred approximately five years after the beneficiary and former spouse separated. In the Complaint for Absolute Divorce, it is stated that the parties have no joint debts and no joint or marital property. While the beneficiary only reportedly lived together for approximately a year, CIS feels that it is reasonable to assume in that time a bona fide marriage would have resulted in some acquired joint assets.

CIS in its intent to revoke notice incorrectly stated that the I-130 petition was withdrawn on May 30, 2000. The actual date the petition was withdrawn was May 17, 2000. The withdrawal was a direct result of the beneficiary's former spouse's sworn statement taken on May 18, 1999. As a result of the I-130 petition being withdrawn, the concurrently filed I-485 application was denied. The beneficiary claims to have through counsel withdrawn the petition on or prior to November of 2001. First, the petition was already withdrawn by CIS at the request of the beneficiary's former spouse in a sworn statement on May 17, 2000. Second, only the petitioner can request to have a petition withdrawn. Therefore, the beneficiary was unable to have the petition withdrawn.

CIS in its intent references that the beneficiary may have knowingly provided fraudulent federal tax documentation in support of this I-140 petition. The alleged submission of fraudulent tax documentation is being investigated by CIS' counsel and the immigration judge (IJ) as part of the beneficiary's on going case before the IJ. It is for this reason that CIS in its intent to revoke notice did not further address the issue of fraudulent federal tax documents.

The beneficiary's response to CIS' intent to revoke does not overcome the findings of CIS investigations and does not clearly establish that the marriage between the beneficiary and Ms. [REDACTED] was entered into for the purpose of evading any provision of immigration law. It is further noted the willingness of Ms. [REDACTED] to withdraw the I-130 petition when questioned about her marriage to the beneficiary calls into question the validity of the marriage.

From the outset, it should be noted that the regulations at 8 C.F.R. § 204.2(a)(1)(ii) specifically state that "[t]he director will deny a petition for an immigrant visa classification filed on behalf of an alien for whom there is **substantial¹¹ and probative¹²** evidence of such an attempt or conspiracy [to enter into a marriage for the purpose of evading the immigration laws]."

¹¹ *Black's Law Dictionary*, 1428 (6th ed. 1990) defines substantial evidence as such evidence that a reasonable mind might accept as adequate to support a conclusion.

The first issue that the director states indicates marriage fraud on behalf of the beneficiary is the lack of substantial corroborating evidence establishing that the beneficiary and his former wife shared a life together.

On appeal, counsel references respondent's response to CIS' NOIR and notes that in the petitioner's letter, dated January 14, 1998, from [redacted] Toyota Parts Manager, Mr. [redacted] states that "[h]e has listed in his file, [redacted] as the person to contact in case of an emergency." Counsel also points to the beneficiary's payroll stubs for February 15, 1998 and May 10, 1998 that identifies the beneficiary as being married; to the joint bank statement for July/August 1997; joint account ATM cards; Chevy Chase Bank letter attesting to the opening of a joint account on 12/26/1996 and closure of the joint account on 6/16/2000; the notarized affidavits of the best man at the wedding; host at the wedding celebration; photographer of wedding pictures; one of the leasers of the three-bedroom apartment on [redacted] best friend; friend who visited the couple at the [redacted] apartment and the [redacted] residence; friend who visited on weekends; rental affidavit from the landlords at [redacted] and the beneficiary's own affidavit. Further counsel submits evidence of a Change of Address to [redacted] and an envelope addressed to the couple at [redacted]

The petitioner's letter, dated January 14, 1998, from [redacted] Toyota Parts Manager, states that "[h]e has listed in his file, [redacted] as the person to contact in case of an emergency." However, the letter does not state that [redacted] is the beneficiary of any insurance benefits, etc. that would be available in the event of death or accident of the beneficiary of the visa petition. An emergency contact number does not equate to a beneficiary of an insurance policy, etc. as an emergency contact number could belong to anyone.

The affidavit of [redacted] best man at the couple's wedding, states that he, the beneficiary, and another friend rented an apartment at [redacted] from 1996 to September 1997 and that the prior spouse lived in that apartment with the beneficiary until they left to a place on [redacted]. However, a letter with accompanying computer printout, dated November 1, 2004, from [redacted], Residential Systems Manager, of [redacted] while showing that the beneficiary was a lease holder at that apartment, it does not show that Mr. [redacted] was a lease holder from August 16, 1996 to September 24, 1997.¹³ The lease holders are listed as [redacted], [redacted] and [redacted]. CIS records do not show that Mr. [redacted] uses any other names to represent himself. The letter does state that the apartment was a three-bedroom unit. However, since Mr. [redacted] is not on the lease, his affidavit cannot be seen as corroborating the beneficiary's and his spouse's residence at the [redacted] Apartment. In addition, *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.

* * *

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.

¹² *Black's Law Dictionary*, 1203 (6th ed. 1990) defines probative evidence as having the effect of proof; tending to prove, or actually proving an issue; that which furnishes, establishes, or contributes toward proof.

¹³ It should be noted that this letter and computer printout was sent to the beneficiary on November 1, 2004.

The affidavit from [REDACTED] and [REDACTED] dated September 17, 2004, simply states that the beneficiary is her best friend, that she knows [REDACTED] the beneficiary and "the girl name [REDACTED] got married in 1997, and that she sometimes went to see the beneficiary and his spouse. However, the affidavit does not explain how Ms. [REDACTED] gained knowledge of the marriage or where she visited the couple.

The affidavit from [REDACTED] dated September 29, 2004, states that he has been a friend of the beneficiary since 1995 and that he visited the beneficiary and his former spouse when they lived in the [REDACTED] apartment and when they moved to "their new place in Gaithersburg on [REDACTED] d." Mr. [REDACTED] claims that he remembers the pair as a happy couple.

An affidavit from Mr. and Mrs. [REDACTED] of [REDACTED] Gaithersburg, Maryland, 20878, dated October 6, 1999, states that "Mr. and Mrs. [REDACTED] and [REDACTED] are married couple. They rented a room in my apartment since September 2nd 1997." The affidavit does not, however, make any mention of whether the beneficiary and his former spouse were required to sign a lease nor did it include any comments on the couple's relationship. The mere fact of a couple residing together is not evidence of a bona fide marriage. In addition, the beneficiary has not provided any other objective evidence such as but not limited to receipts for rent received, rental insurance with both the beneficiary's and [REDACTED] names, pictures showing cohabitation at the [REDACTED] address, maintenance requests, employer records for both the beneficiary and his ex-spouse listing that address as the home address, etc.

An affidavit from [REDACTED], dated October 6, 1997, states that the beneficiary and his former spouse "have been living together at [REDACTED]. As family friends, we visit them sometimes on weekends and holidays. On the 4th of July 1997, we went to the Washington Monument to watch the fire works." Again, this affidavit does not include any comments regarding the beneficiary's and his former spouse's relationship. It is also noted that when Ms. [REDACTED] visited the couple on July 4, 1997 where the couple were residing was not given.

The beneficiary's affidavit, dated September 29, 2004, states:

- 1) Joint Property. Neither of us had any property. Prior to marriage I had a Scout automobile. My wife had no driver's license. I did not think about placing my wife's name on the car. If I had been trying to manufacture evidence for an interview I could easily have done so.
- 2) Lease. My wife and I never signed a lease because the homeowner never requested one. We rented from Mr. & Mrs. [REDACTED]. Actually, we rented from Ms. [REDACTED] since Mr. [REDACTED] was only there from time to time. Mrs. [REDACTED] was alone in a large 3 bedroom apartment. It was pleasant. She enjoyed our company and shared her apartment with us. We were given the master bedroom. At the interview, we provided an affidavit signed by Mrs. [REDACTED], a letter from our attorney when he changed our address with the INS so that we would receive notices there, our postal deliveries were changed to that address as indicated on an envelope we received there, and our friends visited us at that address on [REDACTED] as stated in a friend's affidavit. We lived there until April 18, 1998 when my wife left me.
- 3) My wife had a daughter with another man who was incarcerated when I met my wife. In April that man was released from prison and my wife left me. I had spent some

time with my wife's daughter and had hopes of our making a family in the future. At that time, my wife's daughter was living with her grandmother. From time to time my wife would visit her mother and daughter. I was not bothered by that, but toward April 1998, my wife spent more time in Baltimore.

- 4) After my wife left me, I moved from Mrs. [REDACTED] apartment to [REDACTED]. I wanted to forget all those emotional feelings I had after my wife left me. I had no lease at [REDACTED] either. At the time it seem [sic] acceptable to me that no lease was requested. I made my rental payments timely and no one seemed to request a lease.
- 5) The lease referred to by CIS may have been the lease two of my friends and I had on [REDACTED] before I married. After marrying, and before moving with my wife to [REDACTED] she moved in with me on or before our marriage. Like most newlyweds we shared my bedroom in the apartment. Only three names were permitted on the lease, so I did not add hers. No one seemed to care.
- 6) Commingling of Financial Resources. My wife and I opened a joint bank account in 1996. See statement form [sic] Chevy Chase Bank. My wife had a savings account also. She explained that to the officer at the interview. My wife was not earning that much and had a daughter, so I agreed with the arrangement. My wife and I both had access to the joint account by using our debit cards (submitted at the interview) and through written checks. For example see checks written by my then wife in January 1998.¹⁴
- 7) We had no children of our own. I did spend some time with her daughter, but she lived with her grandmother.
- 8) Affidavits attesting to the bone [sic] fides of the marriage. We had submitted affidavits from our friends and pictures of our friends at home with use [sic] and at our wedding.
- 9) My intent was to establish a life together. I filed my taxes for 1996 income prior to marrying in 1997. We did not file jointly in 1998 before my wife left me. Our relationship was deteriorating before she left. We took pictures at the wedding ceremony and at our celebration following. Some of those pictures were submitted.¹⁵ My wife never divorced me. I finally took that step in 2003 when I was absolutely sure there was no future for us.

¹⁴ The AAO notes that the checks written by the beneficiary's former spouse, the bank statements, and the bank letters have the ex-spouse's first name misspelled (the first name is not spelled this way on any other documents, including her birth certificate, marriage certificate, divorce papers, etc.), and the AAO finds it incredible that she and/or the beneficiary would not have changed that misspelling from the time the bank account was opened in 1996 to the time she wrote the checks, more than a year later, in 1998.

¹⁵ It is noted that none of the pictures the beneficiary claims to have submitted are in the record of proceeding and none were submitted on appeal.

- 10) My wife indirectly expressed her original intent to establish a life together. In her statement of May 5, 1999 and a year after she left me, my wife acknowledged our marriage. She claimed that she wanted to divorce me, but she never did. She also stated that she wished to withdraw the petition she filed on my behalf, but to my knowledge she never did that either. I recognize the hand writing of my former wife. She signed the May 18, 1999 document, but [sic] she did not write any of the hand written portion of the document.¹⁶ Someone else wrote that she wanted to divorce me and wished to withdraw the petition.
- 11) I believed that the petition was pending when I spoke to attorney [REDACTED] through him and believing that I was doing so while the I-130 was still pending, I withdrew my I-485 application.
- 12) I understand that my wife's petition could only have been withdraw[n] by her upon written notice of withdrawal filed by her with any officer of CIS who is authorized to grant[t] or deny petitions. Even after having read the language that my former wife signed it appears to me that she only wished to withdraw the petition but never did so.

The beneficiary's affidavit includes several points that will be discussed separately.

The beneficiary explains that he and his former spouse had no property and that he did not think of placing his wife's name on the car since she had no driver's license. This may have been true when the couple married, but surely, they must have bought something together within the year they were together, such as a bed, radio, etc. that would verify their intent to establish a life together. The beneficiary has provided no evidence of even one single item purchased together. The assertions of counsel (in this case, the beneficiary) do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)).

The beneficiary claims that he was not obligated to sign a lease when he resided at the [REDACTED] address or the [REDACTED] residence. However, there is no evidence provided from the beneficiary that would corroborate his claim that he did live at [REDACTED] or other evidence, examples of where were noted previously. In addition, as stated above, the affidavit from Mr. and Mrs. [REDACTED] does not mention whether the beneficiary was obligated to sign a lease with them on [REDACTED]. See page nine.

The beneficiary asserts that his wife left him in April 1998 after her child's father was released from prison. The beneficiary does not state, however, that his former spouse left him for her child's father, and the investigation conducted by the Baltimore District Office does not claim that the beneficiary's former spouse gave this reason for leaving the beneficiary. In addition, the beneficiary's divorce decree does not state a reason for the divorce other than they separated.

The beneficiary states that he and his former spouse opened a joint account in 1996, and he submitted four checks written on the joint account by his former spouse as evidence of the joint account. However, all of the

¹⁶ The beneficiary has not, however, submitted any evidence which corroborates this claim.

checks submitted were written within a two week period in January 1998. There are no checks provided by the beneficiary that he wrote nor are there any checks for any of 1997 or any other part of 1998. The beneficiary also submitted letters from Chevy Chase Bank stating that the beneficiary and his former spouse opened the joint account in 1996 and closed it in 2000. There is no evidence in the record, however, that establishes that the joint account was continuously used during that period. Again, four checks written on the account does not establish that the beneficiary and his former spouse had the intent to live together as husband and wife. In addition, none of the checks were written for rent, groceries, utilities, etc., and the beneficiary has not provided any receipts for these items or other items purchased during the year he and his former spouse cohabited together. The beneficiary also provided copies of ATM cards and charge cards as evidence of a bona fide marriage. The record, however, does not clearly show the names on those cards, and there is no evidence that the cards were ever used.

The beneficiary claims that his "intent was to establish a life together. I filed my taxes for 1996 income prior to marrying in 1997. We did not file jointly in 1998 before my wife left me. Our relationship was deteriorating before she left. We took pictures at the wedding ceremony and at our celebration following. Some of those pictures were submitted. My wife never divorced me. I finally took that step in 2003 when I was absolutely sure there was no future for us." The beneficiary's 1998 tax returns do not have a file date on them. Therefore, the AAO is unable to confirm the beneficiary's claim that he did not file his 1998 taxes until after his former spouse left him. In addition, there is only one picture in the record of proceeding. Furthermore, the beneficiary states that he divorced his former spouse only after he was certain that there was no future for them.¹⁷ Five years seems an unusually long time to determine that there was no future for them as husband and wife.

The beneficiary asserts that in his former spouse's statement of May 5, 1999, she said she wanted to divorce him, but she never did. She also stated that she wished to withdraw the petition she filed on his behalf, but she did not write any of the hand written portion of the May 18, 1999 document (he recognizes his former spouse's handwriting). The beneficiary also states that he understands that the petition filed by his ex spouse could only be withdrawn upon written notice of withdrawal filed by her with any officer of CIS who is authorized to grant or deny petitions and that she only wished to withdraw the petition.¹⁸ However, the form the beneficiary's former spouse signed specifically states that it is a Record of Sworn Statement in Affidavit Form (Form I-215W). As counsel and the beneficiary claim, there is a difference in the meaning between want and wish. However, the affidavit clearly illustrates the former spouse's intention to withdraw the petition. When CIS notified the beneficiary's former spouse that the petition had been withdrawn, she made no effort to correct the situation, if, in fact, she had no desire to withdraw the petition filed on behalf of the beneficiary.

Finally, the AAO notes that there is an issue not brought up by the director, but that is in the record of proceeding, and that issue is the arrest of the beneficiary's former spouse on three charges of soliciting prostitution for \$75 each on June 10, 1996.¹⁹ The beneficiary claimed to have known the beneficiary for a year

¹⁷ In IJ Tr. Transcr. [REDACTED] (May 26, 2004), the beneficiary states that he believed he was divorced in 2000, a full three years before the actual divorce.

¹⁸ In IJ Tr. Transcr. [REDACTED] (May 26, 2004), the beneficiary acknowledges that the I-130 visa petition was withdrawn by his former spouse.

¹⁹ In making a determination that a beneficiary's prior marriage comes within the purview of 204(c) of the Act, CIS should not give conclusive effect to determinations made in prior proceedings, but, rather, should reach an independent conclusion based on the evidence of record, although any relevant evidence may be relied upon, including evidence having its origin in prior CIS proceedings involving the beneficiary or in court proceedings involving the prior marriage. See *Matter of Tawfik*, 20 I&N Dec. at 166. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does

before he married her in March 1997, less than a year after the arrest for solicitation, but stated that he was not aware that she was a prostitute before the IJ when questioned. This line of questioning was not followed up by either counsel or the IJ during the hearing. However, it would seem to the AAO that it is unlikely that the beneficiary would not know that his former spouse was a prostitute had he been dating her and living with her as described by the beneficiary before the IJ.²⁰

Furthermore, the director states in her decision that because the alleged submission of fraudulent tax documentation is being investigated by CIS counsel and the IJ as part of the beneficiary's ongoing case before the IJ, CIS, in its intent to revoke notice, did not further address the issue of fraudulent federal tax documents. However, the AAO has observed that the beneficiary's tax records show that he claimed a niece as a dependent for the years 1997 through 2001 and two nieces for the years 2002 and 2003. In addition, although the parents of the beneficiary's nieces filed amended taxes in 2003, the amended tax return still does not show the names of the two children claimed by the beneficiary. Also, the AAO finds it unusual that not a single one of the affidavits provided by the beneficiary as proof of a bona fide marriage mentions the children living with the beneficiary, especially during his marriage to his former spouse (not even the beneficiary's landlords). Moreover, at the May 26, 2004 removal proceedings before the IJ, the beneficiary claims that the two children have been living with him since 1999 [See IJ Tr. Transcr. 39:11-25 (May 26, 2004)]; however, during later questioning, he claims that the two children have been living with him for about two years [See IJ Tr. Transcr. (May 26, 2004)]. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In conclusion, the AAO has determined that the evidence submitted on appeal does not overcome the director's decision. There is only scant evidence in the file that the marriage between the beneficiary and his former spouse was a bona fide one, and even that evidence cannot be corroborated. In addition, the beneficiary has given conflicting answers to some of the same questions asked by the IJ, counsel for the government, and CIS. Again, see *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Where there is reason to doubt the validity of the marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the purpose of evading the immigration laws. Such evidence could take many forms, including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences. See *Matter of Soriano*, I&N Dec. 764 (BIA 1988).

not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

²⁰ IJ Tr. Transcr. (May 26, 2004) states:

Q. How long did you live with your wife, sir? How long did you live –

A. Since it would be –

Q. How long did you live in the same household?

A. More than a year. Before I marry her.

Q. When you married her, how long did you live with her as a married couple?

A. More than a year, sir.

Ms. [REDACTED] to Mr. [REDACTED]

Q. And how long were you actually married?

A. I'd say, more than year, I say.

In this case, there is substantial and probative evidence that the beneficiary attempted to enter into a marriage for the purpose of evading immigration laws. CIS visited the beneficiary's spouse at her home, informing her of an investigation and evidence that she did not live with the beneficiary. She conceded they did not live together and immediately withdrew the petition. She was arrested for solicitation less than a year before they married. Investigation results indicate that the beneficiary and Ms. [REDACTED] did not share or develop resources, live together, or care for dependents together. The evidence submitted to overcome that investigation does not in its totality establish that it is more likely than not that the beneficiary and Ms. [REDACTED] had a bona fide marriage. All of the affidavits were short, conclusory, and provided no significant witness or testament to the beneficiary and Ms. [REDACTED] alleged marital relationship. No significant piece of evidence corroborates the claim of a bona fide marriage because there are only a couple of bank statements and payroll stubs that are inconclusive. Additionally, the AAO notes the lack of a statement from Ms. [REDACTED] or any evidence of the beneficiary's claims concerning the circumstances of her leaving him.

Therefore, because the record of proceeding contains substantial and probative evidence that the beneficiary attempted to evade immigration laws through marriage to a United States Citizen, the AAO agrees that the director had good and sufficient cause to revoke the petition's approval.

The petition's approval will remain revoked for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.