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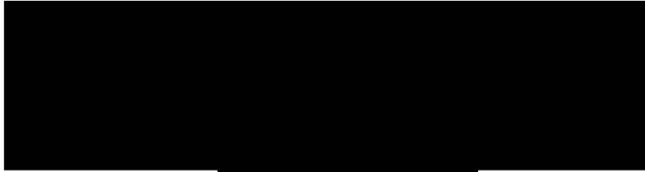
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 29 2007  
EAC 04 222 53154

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Other Worker Pursuant to § 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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a commercial construction company. It seeks to employ the beneficiary permanently in the United States as a construction laborer. 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 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). The director denied the petition accordingly.

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

As set forth in the director's February 4, 2005 denial, the only issue in this case is whether or not 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).

Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), 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 unskilled labor, not of a temporary or seasonal 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 Citizenship and Immigration Service (CIS) Form I-140 employment based petition was filed by the petitioner on July 23, 2004. The labor certification was accepted for filing on April 2, 2001, the priority date of the petition.<sup>1</sup> The director issued a notice of its intent to deny (NOID) the approval of the petition on November 22, 2004.

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

The beneficiary married [REDACTED] on February 15, 1994 in Arlington County, Virginia. On June 20, 1994, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the beneficiary, and the beneficiary filed an Application to Register Permanent Residence or Adjust Status (Form I-485).

The I-130 listed one prior spouse, [REDACTED], for [REDACTED] and no prior spouse or children for the beneficiary. The Biographic Information sheet (Form G-325) that accompanied the I-130 indicated that [REDACTED]'s prior marriage to [REDACTED] was terminated on April 6, 1993, and her residence was listed as [REDACTED] Silver Spring, Maryland from June of 1993 to the present (dated June 20, 1994).

A photocopy of a marriage certificate which accompanied the I-130 stated that [REDACTED]'s prior marriage was terminated in 1990.

A photocopy of a divorce decree for [REDACTED] and [REDACTED] gave the termination of their marriage as April 6, 1993.

The beneficiary's Form I-485 did not list a prior spouse or any children, but did list five siblings. The I-485 also listed [REDACTED] as [REDACTED]'s prior spouse.

A Form G-325, signed by the beneficiary on June 20, 1994, lists [REDACTED] (under the name of [REDACTED]) as his spouse, with no former spouses, and his residence being [REDACTED], Silver Spring, Maryland from December 1992 to the present.

On August 31, 1994, [REDACTED] and the beneficiary appeared at CIS District Office in Baltimore, Maryland and requested they be rescheduled for their interview as "something had come up." They were rescheduled for their interview on September 22, 1994. [REDACTED] and the beneficiary did not appear for the interview.

On October 19, 1994, the beneficiary and an unidentified woman appeared at the Baltimore District Office to provide CIS with a phone number where [REDACTED] and the beneficiary could be reached. [REDACTED] and the beneficiary were scheduled for an interview on October 20, 1994.

<sup>1</sup> 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.

On October 20, 1994, [REDACTED] and the beneficiary were interviewed separately regarding the bona fides of their marriage. CIS scheduled another interview for January 24, 1995.

On January 24, 1995, [REDACTED] and the beneficiary were again questioned regarding their marriage. The following discrepancies were found.

- 1) [REDACTED] stated that although the beneficiary resided at [REDACTED], Silver Spring, Maryland 20903 prior to the marriage, she resided there off and on while she and the beneficiary dated. However, the beneficiary contradicted this statement and said that [REDACTED] did not move in to the Quebec Terrace residence until February 14, 1994, when the two were married.
- 2) [REDACTED] stated they had a roommate named [REDACTED] a Sierra Leone female national, at the Quebec Terrace residence. The beneficiary stated both [REDACTED] and he shared the Quebec Terrace residence with two other foreign nationals, [REDACTED] and [REDACTED].
- 3) The address at which [REDACTED] and the beneficiary stated they resided at this interview, [REDACTED], Silver Spring, Maryland 20904, was also shared with another female foreign national, [REDACTED] and the beneficiary indicated they were subletting the apartment from this individual. However, Ms. [REDACTED] stated that she was "not home much."

On September 20, 1995, CIS obtained a wage and record check on the security numbers submitted by the beneficiary that gave the beneficiary's residence as [REDACTED]. No record of the beneficiary existed in the state of Maryland, and this address is not reflected elsewhere in the record of proceeding.

On November 8, 1996, CIS agents contacted the beneficiary at [REDACTED] Silver Spring, Maryland and discovered that the beneficiary was residing at this address with [REDACTED], that the beneficiary did not know the address of [REDACTED], that [REDACTED] s son, [REDACTED] born on December 28, 1995 and also living at the same residence, was the beneficiary's child, and that although the beneficiary stated that he was a visitor to this residence, an employee for the rental property said that the beneficiary's name was on the lease and the beneficiary's belongings were at the residence.

The I-130 was denied due to the failure of [REDACTED] to respond to CIS' notice of intent to deny, and the I-485 was also denied since the visa petition supporting the application (I-130) was denied.

On August 28, 1998 and October 23, 2001, the beneficiary filed an Application for Temporary Protected Status (Form I-821) showing [REDACTED], Hyattsville, Maryland 20783 as his current residence. The Forms I-821 also reflect the beneficiary's spouse as [REDACTED] with an address of [REDACTED], Landover, Maryland 20785. The applications further documents the beneficiary as having three children, [REDACTED] s (date of birth October 12, 1987) [REDACTED] (date of birth December 28, 1995), and [REDACTED] (date of birth August 19, 1998).

The beneficiary concurrently filed a new I-485 with the I-140 filed by [REDACTED] Under Part 7 of the I-140, the beneficiary's spouse is listed as [REDACTED] s, and the beneficiary claims two children, [REDACTED] and [REDACTED]. The beneficiary's address is given as [REDACTED] Hyattsville, Maryland 20783. The director noted that the record of proceeding shows that the beneficiary goes from having no children, to three children, to two children.

The director noted that the new I-485 contains discrepancies that consist of the G-325A stating that the beneficiary and [REDACTED] were married in Washington, D.C., but no date for the marriage was given, that the beneficiary and [REDACTED] were divorced in Arlington, VA, but the termination date of that marriage was not supplied, and that the only residence listed was that of the [REDACTED] address as of September 1998. Under Part 3, block B of the I-485, the beneficiary has listed his current spouse as [REDACTED] and also claims to have two children.

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 born to the marriage, and affidavits of third parties having knowledge of the bona fides of the marriage relationship. The director further requested that the beneficiary provide original copies of his marriage certificates and divorce decrees and the original birth certificates of all three children claimed previously.

The director received counsel's response to the notice of the intent to deny on December 21, 2004. The director issued a decision denying the petition's approval on February 4, 2005. The director noted that the statements provided by the beneficiary state that in February 1995, he discovered that [REDACTED] was spending a lot of time at [REDACTED] in Washington, D.C. instead of working her night job, and she indicated that she was visiting relatives. The beneficiary also discovered that [REDACTED] had quit her job and that the people at the [REDACTED] address were not relatives, but instead was [REDACTED]'s boyfriend. When he tried to take her home, [REDACTED] replied that she wasn't going home and that she had found someone else. She also said that the beneficiary could not afford her materially and that she could not continue the marriage. The beneficiary indicated that he pursued [REDACTED] for months, but decided to move on in April 1995.

The director also noted that [REDACTED] and the beneficiary's divorce decree stated that they were separated on January 19, 1995, prior to their last interview before CIS on January 24, 1995. The beneficiary failed to disclose to CIS that he and [REDACTED] were separated at that time.

In response to the director's notification that a wage and records check based on social security numbers show the beneficiary's residence as [REDACTED] Washington, D.C., the beneficiary stated that he had never lived in Washington, D.C. There was no explanation or attempt to explain how this address appeared under the beneficiary's social security number as a result of a wage and records check.

In response to the director's statement concerning the visit by CIS agents in November 1996 to the residence at [REDACTED], Silver Spring, Maryland, the beneficiary claims that the address was that of [REDACTED] that he was not living there at the time, but that he did move there at a later date. The director noted that the beneficiary did not explain how his name appeared on the lease in November 1996, if the beneficiary was not living there at the time.

With regard to the filing of the two I-821s which show [REDACTED] as his spouse even on the October 23, 2001 form (after his divorce from [REDACTED] and his marriage to [REDACTED]), the beneficiary does not provide an explanation. The director noted that "it is reasonable to assume the beneficiary would have known to list the correct spouse on his TPS application. However, under penalty of perjury, the beneficiary chose to falsely list a spouse he was no longer married to."

With regards to the three children, the beneficiary responded that, based on his native culture, the responsibility for the offspring of deceased siblings falls to the other siblings and that he has supported Cecil

since the death of [REDACTED] parents. The beneficiary indicated that for humanitarian reasons he listed [REDACTED] as his child on his TPS applications, but did not on the I-140 as he realized it was wrong.

The director noted that the beneficiary was provided with examples of documentary evidence to submit in support of the bona fides of his marriage to [REDACTED] but that the beneficiary only provided two affidavits with no supporting evidence as corroboration for the affidavits. Thus, the director considered the affidavits to have little evidentiary value and stated that "the beneficiary's statements and facts in his CIS record have conflicting information. The beneficiary has made false statements on different applications with CIS at different times. The beneficiary's own statements cannot be considered credible and CIS cannot determine the bona fides of this marriage."

On March 9, 2005, the petitioner appealed the denial.

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<sup>2</sup>. Relevant evidence submitted on appeal includes counsel's statement; a statement, dated March 7, 2005, from the beneficiary, a copy of a letter addressed to [REDACTED] and [REDACTED] at [REDACTED] Silver Spring, Maryland 20904 from [REDACTED], Resident Manager of the Montgomery White Oak Apartments, and a statement from [REDACTED]

The beneficiary's statements<sup>3</sup> provided on appeal state that while his divorce decree to [REDACTED] does show their date of separation as January 19, 1995, prior to their last interview with CIS on January 24, 1995, the decree was in error as it was written in 2001 or approximately six years after the date of their separation. The beneficiary claims he and [REDACTED] separated in the spring of 1995. The beneficiary does not, however, explain how this error could have occurred. The divorce decree of the beneficiary and [REDACTED] which was brought forth by the beneficiary may have occurred in 2001 or six years after the date of their separation, but the fact that the beneficiary could not remember that he and [REDACTED] separated in the spring of 1995 in 2001 and yet remembers it clearly in 2005 is incredible. In fact, the beneficiary's prior statement discloses that he found out in February 1995 that [REDACTED] had a boyfriend in Washington, D.C. and was visiting him there. The beneficiary claims that he pursued his prior spouse for several months but decided to move on and found someone else in April 1995, a mere two months later. Nowhere in the statement does the beneficiary specifically state that he and [REDACTED] separated in the spring of 1995, and there is nothing in the record of proceeding that would substantiate that the beneficiary and [REDACTED] were not separated before he found out that she had

<sup>2</sup> 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).

<sup>3</sup> The declarations of the beneficiary and [REDACTED] that have been provided on appeal are not affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. **Such unsworn statements made in support of an appeal are not evidence and thus, are not entitled to any evidentiary weight.** *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

a boyfriend in February 1995. In fact, with a normal delivery, it would appear that the beneficiary's current spouse was pregnant with their first child in March 1995, or one month after the beneficiary claims to have found his ex spouse with a boyfriend.

In his statement on appeal, the beneficiary indicates that he has no explanation for why a wage and record check of his social security number revealed that he once lived at [REDACTED] in Washington, D.C. as he has never lived in Washington, D.C. However, the beneficiary's record of proceeding reveals that the CIS Baltimore District Office received a change of address form for the beneficiary indicating that his address changed from [REDACTED] Silver Spring, Maryland 20904 to [REDACTED] Washington, D.C. 20001. While this is not the address reported by the wage and record check, it does confirm that the beneficiary has resided in Washington, D.C.

The beneficiary also states on appeal that when CIS agents contacted him at the [REDACTED] residence in November 1996, he did not reside there but did eventually move there. The beneficiary also stated that on November 8, 1996, his name was not on the lease at that time. The beneficiary submitted a letter from [REDACTED] to the named tenants of that unit in support of his claim. The letter is addressed to [REDACTED] and [REDACTED] but it does not give any information regarding the tenants in 1996. The letter specifically states that the "entire Security Deposit of \$400.00 is being retained in accordance with the terms of your lease on the premises known as [REDACTED], Silver Spring, Maryland 20904." The letter also indicates that the tenants had unpaid rent of \$1,779.82 for the time period 1/1/97 through 3/6/97. This letter is not evidence that the beneficiary could not have resided in the residence in 1996 or did not have his name on the lease at that time.

On appeal, the beneficiary states that "if I wrote that I was still married to [REDACTED] in October 2001, that is clearly a mistake as I married my present wife in June 2001." The AAO agrees with the director that it seems unlikely that someone who had only been married for four months would make such a mistake. Surely, the beneficiary knew who he was married to.

The beneficiary admits that for humanitarian reasons he did list his nephew on a TPS application shortly after his brother and sister-in-law were killed in February 1997 in the civil war in Sierra Leone.

Finally, the beneficiary states that "I have lived in the United States since 1991 and I have paid my taxes every year and I am the proud father of two U.S. citizen children, [REDACTED] aged nine, and [REDACTED] aged six. During those fourteen years, I have made errors when completing some forms or applications but this is because I have not always been able to afford assistance to help me with the forms or applications. But I have never entered into a fraudulent marriage. [REDACTED] and I had a real relationship. We married on February 15, 1994 because we were in love. Please see the attached statement from [REDACTED]. The fact that the beneficiary pays his taxes and has U.S. citizen children have no bearing on whether the beneficiary has participated in marriage fraud. In addition, the errors made on the forms and applications submitted by the beneficiary are self explanatory and do not require an attorney to fill them out. *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.

The statement from [REDACTED] confirms that of the beneficiary. However, there is no evidence in the record of proceeding that corroborates the statements of either party.<sup>4</sup> 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)). Thus, the AAO finds that the beneficiary has not established that he and his prior spouse married with the intent to establish a life together. Instead, the record of proceeding reflects that there is substantial and probative evidence of an attempt to enter into a marriage for the purpose of evading immigration laws.

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*<sup>5</sup>, 20 I&N Dec. at 166.

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.

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<sup>4</sup> “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).

<sup>5</sup> *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.”