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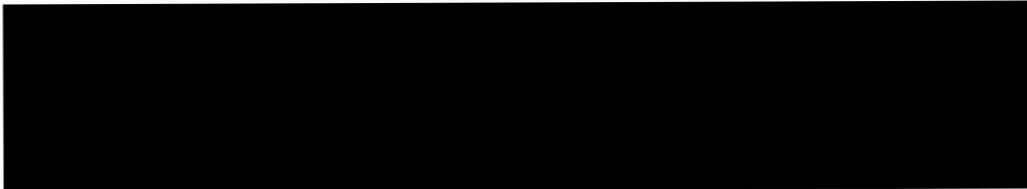
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 02 196 51977

Office: VERMONT SERVICE CENTER

Date: NOV 20 2007

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:



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

The petitioner is a custom slipcover manufacturer. It seeks to employ the beneficiary permanently in the United States as a business operations specialist. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the beneficiary had previously sought to be accorded immediate relative status based upon a marriage that she entered into for the purpose of evading immigration laws.

The record shows that the appeal was properly and timely filed and makes a specific allegation of error in law or fact. The procedural history of this case is documented in the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary. As set forth in the director's decision of denial the sole issue in this case is whether or not the petition must be denied based on section 204(c) of the Act.

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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In the instant case the record contains (1) a copy of the beneficiary's lease, (2) a marriage certificate dated September 3, 1996, (3) bank statements, (4) an undated telephone service promotion, (5) a 1996 Form W-2 Wage and Tax Statement issued to [REDACTED] (6) a portion of a Blue Cross claim form dated June 26, 1997, (7) a Form I-130 Alien Relative Petition, dated June 26, 1997, in which [REDACTED] petitioned for the beneficiary as his wife, (8) a telephone bill, (9) rent receipts, (10) three paycheck stubs issued to the beneficiary by [REDACTED] department store, (11) a January 6 1998 memorandum pertinent to a January 2, 1998 interview of the beneficiary and [REDACTED], (12) a notarized letter dated January 22, 1998 from [REDACTED] or [REDACTED] (13) a July 30, 1999 statement, (14) an August 16, 1999 memorandum of an investigation by an agent of the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), (15) the beneficiary's 2001 Form 1040 U.S. Individual Income Tax Return, (16) a G-325-A Biographic Information form dated October 9, 2002, (17) an affidavit dated December 29, 2005, (18) two affidavits dated December 30, 2005, (19) an affidavit dated January 2, 2006, and (20) what purport to be

photocopies of photographs of the beneficiary, her husband, and family members. The record contains no other evidence pertinent to the beneficiary's previous marriage.

The beneficiary's lease is dated August 2, 1996 and is for an apartment administered by the Bethlehem Housing Authority (BHA). That lease states that the BHA, relying upon the beneficiary's representations as to her income, family size, and housing need, agreed to lease her a three-bedroom apartment for \$36 per month. The beneficiary is listed as head of household. There is no co-head of household listed. The only other people listed as residing at that apartment pursuant to that lease are the beneficiary's two children.

The September 3, 1996 marriage certificate shows that on that date the beneficiary and [REDACTED] were married in Bethlehem, Pennsylvania.

The undated telephone promotion was sent to the beneficiary at [REDACTED] in Bethlehem, Pennsylvania. [REDACTED] 1996 W-2 form shows that he then lived at [REDACTED] in Bethlehem, Pennsylvania, rather than at the beneficiary's address. The June 26, 1997 Blue Cross claim form lists [REDACTED] as the contract holder and the beneficiary as his spouse,

The Form I-130 Alien Relative Petition indicates that both the beneficiary and [REDACTED] lived at [REDACTED] in Bethlehem, Pennsylvania on June 26, 1997. The bank statements submitted are in the name of [REDACTED] and the beneficiary and cover the period from October 8, 1997 to December 4, 1997. The check stubs from Bradlees department stores were issued between December 10, 1997 and December 24, 1997 and state that the beneficiary was then married.

The January 6, 1998 memorandum<sup>1</sup> pertinent to an interview of the beneficiary and [REDACTED] listed various circumstances that the interviewer found suspicious and asked that the *bona fides* of their marriage be investigated. The suspicious circumstances include that the beneficiary stated that her name is [REDACTED] and that she wanted her "green card" to bear that name, notwithstanding that it is the name of her late husband, rather than that of her current husband, [REDACTED]

That memorandum also states that the beneficiary and [REDACTED] were then requested to provide an affidavit from their landlord verifying their mutual address. In response they provided the January 22, 1998 affidavit. That affidavit states that the beneficiary has resided at [REDACTED] since August 2, 1996, and that at the time that affidavit was administered she lived there with her children and her husband, [REDACTED] for a rent of \$380 per month. The beneficiary and [REDACTED] also provided what appears to be a history, dated January 22, 1998, of [REDACTED]'s previous addresses, which was sworn to before a notary and indicates that he lived at [REDACTED] from September 1996 through that attestation.

The December 21, 1997 telephone bill is for service at [REDACTED] and is in the name [REDACTED]. The rent receipts purport to show that [REDACTED] paid rent of \$380 in cash per month to [REDACTED] or [REDACTED] for [REDACTED] during September, October, November, and December of 1997.

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<sup>1</sup> The memorandum was produced on January 6, 1998 by CIS.

The contents of the January 22, 1998 letter were attested to before a notary. The affiant's name is either [REDACTED]. The letter does not include any contact information for the affiant. That letter states that the beneficiary has resided at [REDACTED] since August 2, 1996. It further states,

Her rental payment is \$380.00 per month. The residents listed in her townhouse besides herself are her daughter, [REDACTED] and her husband [REDACTED].

The July 30, 1999 statement is from [REDACTED] stated that he married the beneficiary as stated in the marriage certificate, at which time they resided together at [REDACTED] in Bethlehem, Pennsylvania. He further stated that he moved out "after a couple of months," although he returned for short periods of time to work out [the] problems [between himself and the beneficiary]," and that he filed immigration papers on the beneficiary's behalf on August 24, 1997. Finally, [REDACTED] stated that he wished to withdraw the relative petition he had filed for the beneficiary.

The August 16, 1999 memorandum states that on July 18, 1999 [REDACTED] who resides at [REDACTED] in Bethlehem, Pennsylvania, identified a photograph of [REDACTED] and stated that he was her former boyfriend, and resided with her from April 1997 to July 1998.

That memorandum further states that [REDACTED] manager of the Bethlehem Housing Authority, the beneficiary's landlord, identified [REDACTED] from a photograph and stated that he never resided at [REDACTED]. She said that the beneficiary has lived there with her two children since August 2, 1996 and never advised the housing authority that she had married and that she would institute eviction proceedings. [REDACTED] further stated that she has no knowledge of [REDACTED] and that the January 22, 1998 letter from him misstated the amount of the beneficiary's rent.

The memorandum states, further still, that on July 26, 1999 [REDACTED], father of the beneficiary's husband, was unable to identify a photograph of the beneficiary and stated that he had no knowledge that his son had married.

Finally, the memorandum notes that on July 30, 1999 [REDACTED] in a sworn statement, withdrew the Form I-130 Alien Relative Petition, and that in the same sworn statement he indicated that he resided with the beneficiary for the first couple of months of their marriage.

The beneficiary did not file her 2001 tax return jointly and did not reveal her marital status on that form.

On the G-325 Biographic Information form the beneficiary stated that she had lived at [REDACTED] in Bethlehem, Pennsylvania from September 1996 to February 2000. The beneficiary signed that form on October 9, 2002.

The December 29, 2005 affidavit is from [REDACTED] who states that the beneficiary is the widow of [REDACTED] late brother, that [REDACTED] was present when the beneficiary met [REDACTED] and when they married, and that the marriage was *bona fide*.

One December 30, 2005 affidavit is from [REDACTED] [REDACTED] stated, “[the beneficiary] is my sister by virtue of my position,” without explaining further. [REDACTED] attested the beneficiary and [REDACTED] [REDACTED] resided at [REDACTED] in Bethlehem, Pennsylvania “for some months after their marriage.”

The other December 30, 2005 affidavit is from [REDACTED] who states that the beneficiary is her older sister, that the beneficiary told her she married [REDACTED] and that they resided together “for the first couple of months of [their] marriage.”

The January 2, 2006 affidavit is from [REDACTED] who stated that she is a good friend of the beneficiary and in regular phone contact with her. She further stated that she was aware through their phone calls of the beneficiary’s relationship with [REDACTED] of their marriage, and of the break-up of that marriage.

On November 10, 2005 the Vermont Service Center issued a notice of intent to revoke in this matter. The submissions in response to that notice were considered by the director and are included in the list above. The director determined that the evidence in the record indicates that the beneficiary sought to be accorded an immediate relative or preference status as the spouse of a citizen of the United States by reason of a marriage entered into for the purpose of evading the immigration laws, and, on May 1, 2006, denied the petition.

On appeal, counsel asserted that the more recent version of the history of [REDACTED] residences, that he had lived with the beneficiary for only a few months after they were married, is reconcilable with the other evidence, is credible, and effectively overcomes the evidence that the marriage was a sham. Counsel asserted that the evidence of record supports that the petition should be approved.

The beneficiary and her husband initially stated that they had lived at [REDACTED] and continued to live there. As evidence they provided rent receipts showing that they had paid \$380 per month for the apartment during September, October, November, and December of 1997. They provided a letter from their purported landlord confirming that they both continued to live together at [REDACTED] as of January 22, 1998.

The beneficiary’s landlord’s agent, however, stated that that [REDACTED] had never lived at the apartment at [REDACTED], that she did not know the ostensible landlord who had provided the document to confirm their residence, and that the amount of the beneficiary’s rent was misstated on the receipts provided.

Faced with the evidence contradicting their initial version of events, the beneficiary and her husband provided a revised history. In this new version of events, they lived together only a few months after their wedding on September 3, 1996. [REDACTED] had not, therefore, lived at [REDACTED] during September, October, November, and December of 1997, when the rent receipts purport to show that he paid rent on that apartment. Further, the new version of events does not explain why those rent receipts were paid to [REDACTED] who is not the landlord or its agent, or why they were paid in the amount of \$380, which is not the amount that was due for that apartment’s rent.

The new version of events does not overcome the contradictions in the evidence. Further, the new version of events makes clear that the rent receipts and the letter from [REDACTED] were evidence fabricated in

pursuit of an immigration benefit. At best they present an ostensibly feasible alternative version of events, but they also make clear that fraudulent evidence has been submitted on the beneficiary's behalf.

Based on the evidence in the record this office finds that the beneficiary entered into a sham marriage for no reason other than to obtain an immigration benefit and sought approval of a Form I-130 spousal petition based on that sham marriage. The petition must, therefore, be denied pursuant to section 204(c) of the Act.

The director's notice of intent to revoke and ultimate decision to revoke were based on substantial and probative evidence in the record of proceeding to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. *See Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). The director had good and sufficient cause to revoke approval of the petition. The basis for revocation has not been overcome on appeal.

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.