

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

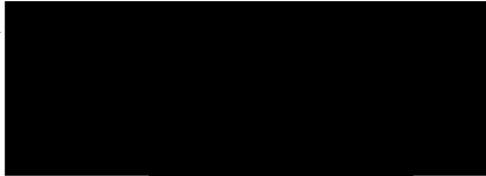
U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B6



FILE:

EAC 03 155 51935

Office: VERMONT SERVICE CENTER

Date:

OCT 01 2007

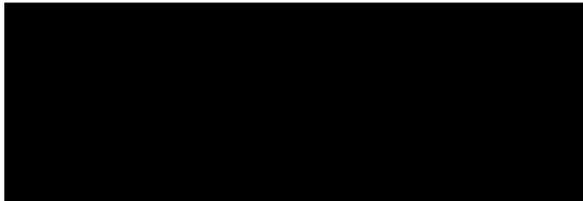
IN RE:

Petitioner:

Beneficiary:

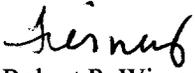
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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.

*for*   
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a concrete firm. It seeks to employ the beneficiary permanently in the United States as a cement mason. 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 a previously filed family-based petition had been denied based on the failure of the beneficiary to establish that his marriage was not entered into solely for the purpose of evading immigration laws. The director stated that he was denying the employment-based petition (I-140) pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c).

Section 204(c) of the Act, 8 U.S.C. § 1154(c) 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 at 8 C.F.R. § 204.2(a)(1)(ii) also provides:

*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 an immigrant visa classification filed on behalf of any alien for 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.

The evidence contained in the record reflects that [REDACTED] formerly known as [REDACTED], date of birth, June 10, 1922, a U.S. citizen, married the beneficiary, [REDACTED], citizen of El Salvador, date of birth, September 19, 1961, on December 12, 1987 in Glenarden, Maryland. [REDACTED] left for El Salvador two weeks later to visit his mother who had suffered a heart attack. [REDACTED] filed a Form I-130, Petition for Alien Relative, on behalf of [REDACTED] which was approved on July 22, 1988. [REDACTED] was subsequently granted conditional permanent resident status and on March 3, 1989 he returned to the United States.

On May 15, 1989, [REDACTED] wrote to the district director at the Baltimore, Maryland immigration office and indicated that she had evidence that her husband [REDACTED] had married her for the sole purpose of gaining immigration benefits. [REDACTED] advised that they were no longer living together, that she wished to terminate the marriage and that she wished to cancel the application for permanent resident status that she had filed on his behalf.

On November 21, 1989, [REDACTED] appeared at the Immigration and Naturalization Service (now Citizenship and Immigration Services, CIS) district office for an interview relevant to her marriage to [REDACTED]. She submitted a written statement in conjunction with the interview in which she withdrew her sponsorship of Mr. [REDACTED]. In her statement, she revealed that he had stayed in her home from March 3, 1989 until April 29, 1989. She presented evidence which indicated that since [REDACTED] received his conditional visa, "his entire personality changed" and that "he became arrogant, insensitive, drinking to excess and very difficult to live with." She also revealed that he had been receiving love letters from a girlfriend in El Salvador. [REDACTED] also stated that her attorney had advised her that she had to wait until April 1990 before filing for divorce.

The record indicates that the final divorce decree between [REDACTED] was granted on March 22, 1991. On April 24, 1991, the Service notified the beneficiary that his conditional permanent residence status was terminated as of March 4, 1991.<sup>1</sup>

The acting center director (director) advised the I-140 petitioner of these facts in her notice of intent to deny the petition, issued on August 23, 2004. The director indicated that she intended to deny the I-140 petition based on the provisions of section 204(c) of the Act in that the evidence indicated that the beneficiary had entered into the marriage for the purpose of evading immigration laws. She additionally noted that according to the application for permanent residence status (Form I-485), the beneficiary fathered a child who was born on February 20, 1991, a month before the divorce from [REDACTED] was granted. The petitioner was afforded thirty (30) days in which to provide argument or evidence in opposition to the director's notice of intent to deny the Form I-140. The director requested evidence that established that the marriage between the beneficiary and [REDACTED] was not entered into for the purpose of evading immigration laws including evidence showing joint ownership of property, 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 marital relationship. The director advised the petitioner that any affidavits should be supported by the above-mentioned documents that the affiant should contain the complete name, address, date and place of birth of the person making the affidavit, as well as the basis of his or her knowledge of the marriage. The director further instructed the petitioner to provide the original birth certificates of all three of the beneficiary's children.

In response, the petitioner submitted a notarized letter from [REDACTED] dated September 21, 2004, in which she indicated that she and the beneficiary married for love and not for the purpose of evading immigration laws, and that the separation of the two was based on personal differences. A notarized letter from [REDACTED] dated September 20, 2004 was also provided. In the letter, [REDACTED] indicated that he was personally in the presence of the beneficiary and [REDACTED] when they were married and that he had seen them do things together

---

<sup>1</sup> The termination was based on the failure to file a joint petition to remove the conditional basis of the beneficiary's residency pursuant to section 216(c) of the Act.

as a couple. He is not sure why they separated and divorced. An additional notarized letter from [REDACTED] was also provided. In the letter, he indicated that he lived in the same building as [REDACTED] and the beneficiary and that he attended their wedding. He indicated that the two fell in love, married and later divorced for personal reasons, but that they continue to be good friends. The petitioner further provided copies of birth certificates of a boy and girl born on February 20, 1991 and July 3, 1992, respectively, in the United States, as well as a girl born on February 20, 1996 in Honduras. The father's name is not indicated on these certificates. Additionally offered is a copy of a Maryland motor vehicle registration certificate of a 1989 Toyota truck that was originally held in both the names of the beneficiary and [REDACTED]

The director denied the petition on December 10, 2004. By that time, the acting director had been replaced by a different director who held that position in permanent status. This director noted that the affidavits had been reviewed, but that they didn't constitute sufficient cause to conclude that the marriage depicted in the record was not entered into for the purpose of evading the provisions of immigration law. The director observed that Ms. [REDACTED] statements contained in her September 21, 2004 letter sharply contradicted the sentiments expressed in her earlier statements and evidence she had previously presented to the Service which were submitted as proof that the beneficiary had used her to gain immigration benefits fraudulently. He also noted that the Suthard letter provided few details of how or when he was acquainted with the beneficiary and [REDACTED] and the basis on which he formed an opinion that the two had initially acted as "a happy couple." The director also noted that although the 1989 Toyota truck registration certificate indicated both names on the title, [REDACTED] correspondence indicates that she alone provided the down payment on the truck.

On appeal, the petitioner, through counsel, simply submits additional letters from: [REDACTED] daughter [REDACTED] 2) [REDACTED]. This office notes that [REDACTED] is the owner of the I-140 petitioning business. His letter is in the form of a character reference of the beneficiary, whom he identified as a church participant and family man. [REDACTED] stated in her letter that she has known [REDACTED] for over 20 years, and she indicated that she saw [REDACTED] and the beneficiary live in harmony and that the reason for the divorce was never discussed with her. [REDACTED]'s letter is also a character reference for the beneficiary. In the letter, [REDACTED] indicated that in 1987 he was best man in the wedding between the beneficiary and [REDACTED] in 1987. He also indicated that the beneficiary did not marry [REDACTED] to evade immigration laws. [REDACTED] indicated that the beneficiary is hard-working and that [REDACTED] wrote letters to the Service in the past which suggested otherwise, only because she wrote those letters in anger. [REDACTED] letter indicates that she never heard that the beneficiary married her mother for the purpose of remaining in the United States. Her letter also indicates that the beneficiary and her mother lived together until they obtained a divorce in 1991, which is inconsistent with the evidence in the record indicating that the beneficiary stayed in Ms. [REDACTED] home for only a few weeks after returning from El Salvador in March 1989.

[REDACTED]'s notarized letter, dated January 6, 2005, submitted on appeal, described the history of the relationship with the beneficiary, claiming that the almost 40 year difference in ages was revealed when they applied for a marriage certificate. In her letter, she indicated that this age difference was not apparent to the two of them prior to this and that it did not deter them at the time that it became known because they were in love. Upon the beneficiary's return to the United States after the approval of his conditional permanent residence status, Ms. [REDACTED] letter indicates that the beneficiary's girlfriend in El Salvador began mailing the beneficiary letters to Ms. [REDACTED] home, and the beneficiary started to drink and stay out for days at a time. [REDACTED] indicated that she

was puzzled by his behavior. The beneficiary also wrecked the Toyota truck that she had purchased for him. Ms. [REDACTED] explained that at the time, [REDACTED] believed that the beneficiary had married her to obtain permanent residency in the United States, but that she has since learned that this was not so. She claimed that he changed his behavior after the divorce and that she has watched him become a responsible father to his children. [REDACTED] expressed her desire to retract the letter written to the Service because it would be a harmful to the beneficiary's children's education to deport them to El Salvador with their father where they would have to adjust to the different language and culture of that country.

The AAO cannot find that the director's decision to deny the I-140 was erroneous. During 1989, [REDACTED] submitted into the record her own sworn statements which indicate that just subsequent to her 1987 marriage to the beneficiary, the beneficiary left [REDACTED]' home for his native El Salvador. She indicated that prior to the marriage, the beneficiary behaved in a way that convinced [REDACTED] that he was so in love with her that he apparently did not notice or was not at all concerned that she was nearly four decades older than he. Yet, when he finally managed, with [REDACTED]' assistance, to return to the United States lawfully, after being away for fourteen months, he remained with [REDACTED] only a few weeks. During this period, his behavior modified dramatically from what it had been previously. That is, once he had successfully obtained conditional permanent residency through [REDACTED] he no longer behaved as if he loved [REDACTED] as if he even cared about her. During those few weeks, he behaved abusively toward [REDACTED] he drank heavily, and he spent a significant portion of those few weeks staying away from their home for days at a time. When [REDACTED] expressed concern with his behavior, he would use obscene language to insult her. [REDACTED] also submitted into the record evidence that the beneficiary had a romantic relationship with a woman in El Salvador during his time in that country just subsequent to having married [REDACTED], and that this relationship continued after the beneficiary returned to stay at [REDACTED] home in 1989. [REDACTED] also submitted documentation indicating that the beneficiary manipulated [REDACTED] into spending tens of thousands of dollars to support him. To overcome this evidence, the petitioner submits personal affidavits and documentation relating to a Toyota truck which [REDACTED] bought for the beneficiary. Such evidence is not sufficient to overcome the finding that the beneficiary had entered into the marriage for the purpose of obtaining an immigration benefit.

In *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), the Board 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 upon 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. *See Id.*

The petitioner failed to provide independent, reliable evidence which points to the finding that the beneficiary did not enter the marriage with [REDACTED] for the purpose of evading immigration laws. In fact, the statement from [REDACTED] daughter submitted on appeal indicating that the beneficiary and her mother lived together from March 1989 until their divorce in March 1991, casts further doubt on the evidence submitted on appeal in that it directly contradicts [REDACTED] consistent claims in the record that the beneficiary moved out of their home a

few weeks after returning from El Salvador in March 1989. Further, claims of the beneficiary's improved behavior and character following the divorce, even if taken as true, do not outweigh the circumstances surrounding the brief marriage between these parties, who resided together a total of only a few weeks subsequent to obtaining a marriage certificate, and the evidence in the record that the beneficiary's behavior became abusive toward [REDACTED] as soon as he had secured conditional permanent residency with her assistance.

The I-140 shall not be approved, pursuant to section 204(c) of the Act, based on the substantial and probative evidence in the record that the beneficiary entered into his marriage to [REDACTED] to evade U.S. immigration laws. *See also* 8 C.F.R. § 204.2(a)(1)(ii).

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.