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U.S. Citizenship
and Immigration
Services

07

FILE:

WAC 03 221 52794

Office: CALIFORNIA SERVICE CENTER

Date: DEC 23 2005

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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.

Maia Johnson

2 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for further consideration. The director has since issued a new decision and certified it to the AAO for review. The director's decision will be affirmed.

The petitioner is an Islamic center that operates a mosque and a school. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as an imam. The director's initial decision is discussed in the AAO's remand order of September 16, 2005 and need not be recapitulated here. In the more recent decision, the director determined that the beneficiary is not entitled to an approved petition, pursuant to the marriage fraud provisions of section 204(c) of the Act.

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 [Secretary of Homeland Security] 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.

8 C.F.R. § 204.2(a)(1)(ii) states:

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 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.

A "Certified Copy of Marriage Record," maintained by the judge of the Probate Court of Lucas County, Ohio, indicates that a local minister solemnized a marriage between the beneficiary and another individual on April 18, 1985. On September 5, 1985, the beneficiary's spouse gave a sworn statement to a special agent of the Immigration and Naturalization Service. That individual stated that she received \$600 in cash to marry the beneficiary; she added, "I understand that this marriage was solely for the purpose of allowing [the beneficiary] to stay in the United States, go to school and become a citizen."

A visa petition may be denied pursuant to section 204(c)(2) of the Act where there is evidence in the record to indicate that an alien previously conspired to enter into a fraudulent marriage. *Matter of Kahy*, 19 I&N Dec.

803 (BIA 1988). Testimony by the spouse, admitting knowledge of the fraudulent nature of the marriage, constitutes evidence of an attempt or conspiracy for the purposes of 8 C.F.R. § 204.2(a)(2)(ii). *Id.* at 807, n.3.

The marriage certificate and sworn statement in the beneficiary's file indicate that the beneficiary attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. Given this evidence, federal law prohibits the approval of any immigrant petition (including any special immigrant religious worker petition) on the beneficiary's behalf.

The petitioner has been repeatedly advised of the above information, in AAO decisions issued in April and September of 2005, and in the director's certified decision of November 4, 2005. Pursuant to 8 C.F.R. § 103.4(a)(2), the director allowed the petitioner 30 days to supplement the record following the issuance of the certified decision. The record contains no response from the petitioner. Therefore, we conclude that the petitioner has not disputed the information set forth in the director's November 2005 decision or in prior AAO decisions. We affirm the finding that the beneficiary has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. Therefore, by law, neither this petition, nor any possible future petition filed on the beneficiary's behalf may be approved.

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 sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The decision of the director is affirmed.