U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 22 2008

SRC 00 072 51676

IN RE: Petitioner: [redacted]
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:

[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 immigrant visa petition was initially approved by the Director, Texas Service Center on March 7, 2000. In connection with the beneficiary's Form I-130, Petition for Alien Relative, the director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter was then before the Administrative Appeals Office (AAO) on appeal. The AAO determined that no notice of intent to revoke (NOIR) had been issued by the director pursuant to 8 C.F.R § 205.2, and remanded the petition to the director for entry of a new decision. On June 26, 2006, the director issued a motion to reopen *sua sponte* and a Notice of Intent to Deny (NOIR) the instant I-140 petition that discussed both the previous denial of the beneficiary's I-130 petition and the issues raised by counsel on appeal. In his NOIR, the director provided the beneficiary with a copy of the original denial dated January 8, 1989[1] of the beneficiary's prior I-130 petition. The director then submitted the new decision to the AAO, in compliance with the AAO guidance. The matter is now before the Administrative Appeals Office (AAO). The petitioner has submitted no further appeal or response to the NOIR. Thus, the AAO will make its final determination based on the record as presently constituted.

The petitioner is an Italian restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty cook of Italian food. The petition was filed for classification of the beneficiary under section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act) as a skilled worker. As required by statute, the petition was accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor (DOL).

The approval of this petition was revoked as a result of the beneficiary's previous immigrant visa petition. A Form I-130, Petition for Alien Relative, was filed on the beneficiary's behalf on November 27, 1987. Concurrent with the filing of Form I-130, the beneficiary also sought lawful permanent residence and employment authorization as the immediate relative of a U.S. citizen. The file contains the completed forms, signed by the beneficiary, and a copy of a Certificate of Marriage between the beneficiary and [redacted]

In his Notice of Intent to Deny the petition, the director stated that on December 7, 1989, the beneficiary and the I-130 petitioner appeared together for an interview at the Miami District Office, and that many discrepancies were encountered during the interview. The director noted that the I-130 denial notice listed nine questions that were answered differently by the beneficiary and his claimed spouse and that the I-130 denial notice also indicated that when the beneficiary and [redacted] were confronted with the discrepancies, they could give no satisfactory answers for the conflicting testimony.

The director then noted that the Miami District Office issued a denial of the I-130 petition on January 8, 1990. The director also stated that the denial of the I-130 petition was sent to the petitioner[2] and her attorney of record, Kenneth Panzer, and that a denial of the I-485 petition dated March 29, 1990 was issued to the beneficiary and his attorney of record, Kenneth Panzer. The director further noted that the domestic return receipt for the I-130 petition was addressed to Kenneth Panzer and signed on January 12, 1990. The director further noted that the beneficiary divorced the petitioner in Dade Country, Florida on November 5, 1990 and that the death certificate

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[1] The director noted in the NOIR that while the I-130 denial is dated January 8, 1989, the Miami District Office interview with the beneficiary and the I-130 petitioner did not take place until December 1989. The director concluded that the denial could not have been issued in January 1989 but rather January 1990.

[2] Although counsel on appeal noted that the beneficiary had not received a copy of the I-130 decision, the director correctly noted that the beneficiary was not a party in the I-130 proceedings and thus he was not sent a copy of the decision nor was he entitled to file an appeal of that decision. *See* 8 C.F.R. § 103.2(a)(3).

submitted by the petitioner on appeal for [redacted] indicated that she died on September 10, 1990.

Based on the submission to the petitioner of the Notice of Intent to Deny the I-140 petition, the AAO finds that the director has fulfilled his obligations with regard to 8 C.F.R. § 205.2. Furthermore, the AAO notes that the director has addressed the issues raised by the petitioner on previous appeal. The petitioner has not submitted any timely response to the director's NOIR.

Section 204(c) provides for the following:

> Notwithstanding the provisions of subsection (b)[3] no petition shall be approved if
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> (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 [director] to have been entered into for the purpose of evading the immigration laws or
> (2) the [director] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

In addition, 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 o any alien for whom there is substantial and probative evidence of such 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 AAO notes that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The director's NOIR sufficiently detailed the evidence of the record, primarily the denial of the I-130 petition in 1990, which contained the numerous discrepancies between the testimony of the beneficiary and the petitioner in their marriage petition interview. The director also detailed the submission of the denial of the I-130 petition to the petitioner and her attorney of record.

The standard for reviewing section 204(c) appeals is laid out in *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990).

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[3] Subsection (b) of section 204 of the Act refers to preference visa petitions that are verified as true and forwarded to the State Department for issuance of a visa.

In *Tawfik*, the Board held that visa revocation pursuant to section 204(c) may only be sustained if there is 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 also Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972).

There is 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.

In summary, the record of proceeding contains evidence that a family-based immigrant petition was filed to obtain an immigration benefit for the beneficiary. The AAO has no evidence that the marriage certificate is a fraudulent document. Thus, on the face of the document, a marriage occurred between the beneficiary and [redacted] [redacted] In addition, an independent review of the documentation in the record of proceeding presents substantial and probative evidence to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. Thus, the director's determination 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 determined by CIS to have been entered into for the purpose of evading the immigration laws is affirmed.

ORDER: The director's decision of October 29, 2004 is affirmed. The approval of the employment-based immigrant visa petition is revoked.