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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date SEP 15 2009

EAC 04 143 52125

IN RE: Petitioner:
Beneficiary: [redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the preference visa petition. Subsequently, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition. In his Notice of Revocation (NOR), the director ultimately revoked the approval of the Form I-140 petition. The matter is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a mason under Section 203(b)(3) of the Act, 8 U.S.C. § 1153(b)(3). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). On May 29, 2007, the director revoked the petition's approval based upon the determination that the beneficiary is ineligible for the classification sought based on the beneficiary's fraudulent marriage to a United States citizen and revoked the petition's approval pursuant to Section 204(c) of the Act, 8 U.S.C. § 1154(c).

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 the decision. Further elaboration of the procedural history will be made only as necessary.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), 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 skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under Section 205 of the Act, the Board

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[1] The Form I-140 petition was filed on April 14, 2004; the director approved the petition on August 11, 2004; a NOIR was issued by the director to the petitioner on January 16, 2007; the petitioner failed to respond to the NOIR; the director issued a NOR to the petitioner on May 29, 2007; and the petitioner appealed the revocation of the petition's approval on June 8, 2007. On April 15, 1997, [redacted] had filed a Form I-130 petition for her husband, the beneficiary, [redacted] On March 4, 1999 during an interview with U.S. Citizenship and Immigration Services (USCIS), [redacted] gave a sworn statement indicating that her husband never had resided with her and that he had promised to help pay for her and her daughter's living expenses in exchange for her marrying him and obtaining a green card for him. [redacted] further stated that her husband had promised that she would not go to jail for committing this act of fraud. USCIS subsequently denied the form I-130 petition on March 15, 2000 for fraud under section 204(c) of the Immigration and Nationality Act (the Act). On May 3, 2002, a divorce decree was issued dissolving the marriage between [redacted] and the beneficiary.

of Immigration Appeals (BIA) has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, 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 decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

The realization by the director that the petition was approved in error due to fraud and/or willful misrepresentation may be good and sufficient cause for revoking the approval.

As set forth in the director's NOR, the single issue in this case is whether or not the marriage bar under Section 204(c) of the Act applies to this case. The approval of this petition was revoked as a result of the beneficiary's other immigrant visa petition. A Form I-130 petition was filed on the beneficiary's behalf on April 15, 1997. Concurrent with the filing of Form I-130 petition, the beneficiary also sought lawful permanent residence and employment authorization as the immediate relative of a United States citizen. The file contains the completed forms, signed by the beneficiary, photographs, and a copy of a marriage certificate between the beneficiary and [redacted]

In connection with the Form I-130 petition, USCIS denied it on March 15, 2000 for fraud under section 204(c) of the Act following an interview with [redacted] in which she admitted that her husband never had resided with her and that he had promised to help pay for her and her daughter's living expenses in exchange for her marrying him and obtaining a green card for him.

The record of proceeding contains the following relevant evidence: the beneficiary and his wife's marriage certificate from February 7, 1997 and divorce decree from May 3, 2002; documentation showing that the beneficiary and his wife maintained a joint bank account since March 10, 1997; a notice of rent owed as of September 22, 1997 by the beneficiary and his wife who were listed as joint tenants; a credit card application filed by the beneficiary and his wife that was denied on September 26, 1997; the beneficiary and his wife's Stokes interview answers from September 10, 1998[2]; and [redacted] sworn statement to USCIS against her husband from March 4, 1999.

On May 29, 2007, the director revoked the Form I-140 petition's approval pursuant to Section 204(c) of the Act, 8 U.S.C. § 1154(c). Specifically, the director noted that the beneficiary had failed to respond to his January 16, 2007 NOIR and that the evidence in the record of proceeding supported a reasonable inference that the petitioner's prior marriage with [redacted] was entered into for the purpose of evading immigration laws.

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[2] The AAO notes that spouses are separated during a Stokes interview. A USCIS officer will question each individual in order to elicit information about the other. The questions posed regard their relationship, home life, and daily interactions.

Section 204(c) provides for the following:

> Notwithstanding the provisions of subsection (b)[3] 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 [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.

The regulation 8 C.F.R. § 204.2(a)(1)(ii) states in pertinent part:

> 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.

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.

On appeal, counsel states that the beneficiary and his wife lived together and planned to have their own children together. Counsel asserts that, when [redacted] spoke with USCIS on March 4, 1999, she did so out of spite, as her relationship with the beneficiary had recently deteriorated. Counsel also argues that the beneficiary never responded to the director's January 16, 2007 NOIR due to the advice of prior counsel and because he had planned at that time to move home to Ecuador rather than pursuing the petition further.

The AAO notes that all of the evidence submitted regarding the beneficiary and his wife's commingling of finances and living together appears to be general in nature. For example, there is

[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.

no evidence that the beneficiary bought his wife a particular item or that she made a particular deposit to or withdrawal from their joint checking account. Also, during the Stokes interview, he said that there were two windows in their shared kitchen, but she said there was only one.

The AAO notes that the USCIS Officer who conducted the beneficiary and his wife's Stokes interview on September 10, 1998 documented numerous discrepancies and inconsistencies between their testimonies, which were given under oath. From how much education she had had to who had gotten up first that morning to who he worked for, the beneficiary and his wife consistently provided contradictory information to the officer.[4] *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." *Matter of Ho* also states: "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." *Id.* at 591-592. Neither the beneficiary nor counsel has provided an explanation for those discrepancies and inconsistencies.

There is substantial and probative evidence in the record of proceeding to support a reasonable inference that there was an attempt to enter into a sham or fraudulent marriage. We find that [redacted] and the alien beneficiary, by fraud or by willfully misrepresenting a material fact, are in violation of Section 212(a)(6)(c)(i) of the Act first mentioned above.

We find that there is substantial and probative evidence of an attempt or conspiracy by the alien and other individuals who have attempted or conspired to enter into a marriage in violation of the regulation 8 C.F.R. § 204.2(a)(1)(ii) for the purpose of evading the immigration laws. The beneficiary by submitting fraudulent documents or by conspiring with others to submit fraudulent documents that on their face presented evidence of a valid marriage where none existed as a basis of that petition, committed fraud.

The standard for revocation is found in statutory authority at Section 205 of the Act as stated above, and it is that standard that is applicable in this case. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Therefore, an independent review of the documentation reflects ample evidence that the beneficiary attempted to evade the immigration laws by marrying [redacted], and that attempt is documented in the alien's file. 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

[4] For example, [redacted] stated that she completed the 10th grade, but her husband stated she had completed only the 9th grade. She also stated that she got up first that morning, but he stated that they had gotten up at the same time. [redacted] also stated that the beneficiary worked for a man named [redacted] but he revealed that his name was instead [redacted]

marriage determined by USCIS to have been entered into for the purpose of evading the immigration laws is affirmed.

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.