U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 13 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Nebraska Service Center. In connection with the beneficiary's Form I-130, Petition for Alien Relative (Form I-130), the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

The petitioner is a specialty restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty cook. The petition was filed for classification of the beneficiary under section 203(b)(3) of the Immigration and Nationality Act (the Act). 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 United States Department of Labor (DOL).

The petitioner's Form ETA 750 was filed with DOL on April 27, 2001 and certified by DOL on January 11, 2002. The petitioner subsequently filed Form I-140 with U.S. Citizenship and Immigration Services (USCIS) on October 28, 2002, which was approved on March 12, 2003.

The approval of this petition was revoked as a result of the beneficiary's other immigrant visa petition. A Form I-130 was filed on the beneficiary's behalf on July 16, 1997. 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, among other documents, the completed immigration forms signed by the beneficiary and a copy of a marriage certificate between the beneficiary and [1]

In connection with the Form I-130, the Chicago field office director sent two Notices of Intent to Deny the Form I-130. The first Notice of Intent to Deny (1st NOID) dated December 27, 2007, listed the evidence considered by the director, including:

- Marriage certificate for the beneficiary and dated May 30, 1997 issued in Illinois;
- Illinois identification card issued September 15, 1998 to with an address listed as Illinois;
- Three pictures of the beneficiary and
- An Illinois driver's license issued to the beneficiary on October 20, 1997, with an address

[1] 's last name was spelled " " on Form I-130.

listed as Illinois;

•Citibank check from the beneficiary dated December 13, 1997 payable to

• statement dated April 1, 1998 in the names of the beneficiary and [2]

•AT&T statement with no named addressee dated January 22, 1999;

•Lost & Found police report for the beneficiary dated December 18, 1996 showing an address of Illinois;

•IRS Forms 1040 for the years 1997 and 1998 in the names of the beneficiary and [3]

•Illinois tax returns for 1997 and 1998 in the names of the beneficiary and

•Letter from Illinois indicating that worked there;

•Two leases for periods of August 1, 1997 through July 31, 1998 and July 31, 1998 through July 31, 1999 for rental property at Illinois signed by the beneficiary and as lessees;[4]

•Refund check in the amount of $50.00 issued by the Internal Revenue Service (IRS) to the beneficiary and and

•Ameritech statements for the beneficiary.

The Chicago field office director noted that the record showed no evidence of shared credit, jointly held bank accounts, jointly held insurance, or jointly owned property that would support an intent to establish a life together. Further, the director noted that the beneficiary and had not lived together since the marriage and that the marriage was arranged by a third party; that lived in Indiana during the period that the couple represented that they lived together in , that had a child with and that the beneficiary wanted to place his name on the birth certificate to make the immigration process easier.[5]

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[2] 's last name was spelled ' on the bill.
[3] 's last name was spelled ' " on the 1998 IRS Form 1040.
[4] The director incorrectly noted that the first lease ran from July 30, 1997 through August 1, 1997.
[5] *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.

Counsel submitted a response to the 1st NOID on January 28, 2008, including a brief, an affidavit from dated January 24, 2008 and an affidavit from dated January 25, 2008.[6] Counsel stated in her brief that the marriage between the beneficiary and was bona fide; that the couple met seven months prior to their marriage;[7] that they lived together; that they had an intricate wedding reception and had proof of banquet hall receipts, photographs of the wedding and party, wedding cards and invitations, video of the party, cards and letters mailed during their dating, and emails sent during their dating. Counsel asserts that the originals of such items were given to the beneficiary's former counsel and that he lost those items.[8] She claims that the parties filed a complaint against the attorney for negligence, but she did not submit a copy of the complaint.[9] The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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[6] The affidavit from Mr. states that in 1997, "was picking me up from school and babysitting me after school;" that he knew that the beneficiary and were married and lived together; that he believed that they got married for the purpose of spending a life together; and that he observed them many times together between 1997 and 2001. It is not clear how old Mr. was in 1997; however, if he required a babysitter, it is not clear how, at such a young age, he recognized that the beneficiary and got married for the purpose of spending a life together. Further, although he stated that he observed them many times together from 1997 to 2001, he does not mention a child living with them. He mentioned several reasons for their marital discord, but did not list 's giving birth to another man's child in 1998 as one of those reasons. *See Matter of Ho*, 19 I&N Dec. at 591(stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

[7] Later in her brief, she stated that they met nearly one year prior to their marriage. *Matter of Ho*, 19 I&N Dec. at 591-592, states:

> [i]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

The inconsistencies regarding when the beneficiary and met have not been resolved with independent, objective evidence.

[8] The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). It is not clear why objective evidence could not have been obtained through other means such as why the banquet hall could not issue a duplicate receipt, why the emails could not be retrieved and printed from the beneficiary's computer and/or 's computer, and why a copy of a wedding invitation could not be obtained from one of the wedding guests.

[9] Any appeal based upon a claim of ineffective assistance of counsel requires:

The second Notice of Intent to Deny (2nd NOID) dated May 12, 2008, noted discrepancies in the way spelled the beneficiary's last name; that obtained an identification card on the date of the beneficiary's adjustment of status interview; that indicated that she met the beneficiary at a submarine shop in Chicago in February 1998; and that when the beneficiary was detained at O'Hare International Airport on April 1, 1999, he carried in his personal belongings 's name, her Indiana telephone number and her Indiana address. The 2nd NOID informed that an immigration officer contacted her at her Indiana telephone number; that she initially denied the marriage; that she then admitted to marrying the beneficiary; that she married the beneficiary as a favor so that he could stay in the United States; that the last time she saw the beneficiary was at his adjustment of status interview in September 1998; that the immigration officer asked her to come to the airport to provide a sworn statement and that she did so; and that she executed a sworn statement in the name of on April 2, 1999.

The 2nd NOID also noted the sworn statement from the beneficiary given before two immigration officers on April 1, 1999 at O'Hare International Airport (Beneficiary's Statement), in which he stated that he was living in that he had been out of the country for two months; that he lived with before and after their May 30, 1997 marriage; that he knew for four months before marrying her; and that he met at a submarine shop where she worked. [10]

The 2nd NOID also recited the following information from an affidavit signed by on April 2, 1999 ('s 1st Statement):

- lived in Indiana and she had been living there for the past year with her boyfriend, and their 9-month old daughter;
- was the father of her child;
- lived and worked in Indiana;

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(1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard,
(2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and
(3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not why not.

Matter of Lozada, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

[10] The Beneficiary's Statement also indicates that had three sisters, but that the beneficiary did not know their names even though they sometimes "come to my house."

married the beneficiary as a favor to help him obtain immigration papers;

•The marriage was arranged by ' ' with the aid of ' ,"
the lady who solicited to marry the beneficiary;

•The marriage was arranged at

told she was recruiting United States citizens to enter into marriages with citizens of other nations to help them get their immigration papers;

•Belinda recruited and another female to marry aliens to obtain their immigration papers;

• never lived with the beneficiary;

was told she would be paid every time she went with the beneficiary for immigration related matters and did receive money therefore;

did not have a house or apartment together with the beneficiary;

•The pictures provided to immigration officials were taken by for the purpose of obtaining immigration benefits;

•The beneficiary knew that married him so he could obtain immigration benefits and thanked him for doing so;

•The beneficiary put s name on a phone and gas bill, but she would not put her name on a bank account with him;

told that she would only have to be married to the beneficiary for a year and that it was "easy;"

•When the beneficiary learned of the child had with the beneficiary stated "that I should of [sic] put his name on the birth certificate because that would have been easier for him;"

helped the beneficiary gain immigration benefits illegally;

knew the marriage was against the law; and

received money for her attendance at immigration related matters.[11]

The 2nd NOID also recited the following information from an affidavit signed by on January 23, 2008 ('s 2nd Statement):[12]

- met the beneficiary at a hot dog stand in
- married the beneficiary on May 30, 1997 and got an apartment with him at Illinois;
- lived with the beneficiary at that address until March 2002;[13]
- 's marriage to the beneficiary was not arranged;
- was an old friend with bad credit;
- had an affair with
- had a child by an unspecified man, not her husband;

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[11] 's 1st Statement declared that any statement "must be given freely and voluntarily" and, when asked by the immigration officer whether she was willing to answer questions regarding the beneficiary's application for admission to the United States, she indicated "yes." She also swore that her statements were truthful. At the time of 's 1st Statement on April 2, 1999, she indicated that her daughter was nine months old. Therefore, her daughter was born on or about July 1998 and was conceived on or about October 1997, within a few months of her marriage to the beneficiary. 's 2nd Statement indicates that differences relating to money, religion and culture led to a "breakdown" in the marriage. She stated that she got pregnant with another man's baby; that when the beneficiary found out about it he was furious; that after the baby was born the beneficiary was not loving to the child; and that she "decided to run away from him," presumably in March 2002 when she stated that she and the beneficiary stopped living together. It is unclear how knew, before the child was born, that the father of her child was (and *not* her husband) or why she lived with her husband for nearly four years after the birth of her child when he was not "loving" to that child. Further, it is unclear why the child was not listed on 's 1998 federal income tax return as a dependent. *See Matter of Ho*, 19 I&N Dec. at 591(stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

[12] 's last name was spelled " on s 2nd Statement.

[13] On an Appointment Notice dated August 20, 2001 for the beneficiary's adjustment of status interview, the beneficiary indicated that due to "family problems" his wife is not accompanying him to the interview and that he would reschedule or pursue another course of action in the future. He repeated this statement on a subsequent Appointment Notice dated April 4, 2002.

- co-signed an apartment lease for so he could stay at the apartment;
- married the beneficiary because she was in love with him;
- did not marry the beneficiary so he could get his "greencard;"
- was not paid to marry the beneficiary; and
- is known as .

The Chicago district director noted that the discrepancies in the statements and documents in the record and the interview statements were "striking," including the bona fides of the marriage, where the beneficiary and met, whether they lived together, the purpose behind the marriage, and whether was paid for her role in a fraudulent marriage.[14] The Chicago district director stated that the dissolution of the marriage pursuant to a divorce decree filed July 10, 2002[15] rendered the beneficiary ineligible for the benefit sought.[16]

Counsel submitted a response to the 2nd NOID on May 29, 2008, including a brief and no additional evidence. Counsel asserted that the beneficiary's name has a number of spelling variations and chose one that "she has always used;"[17] that the fact that obtained an identification card on the day of the beneficiary's adjustment of status interview is irrelevant; that 's 1st Statement was taken without the presence of an attorney; that could not understand the contents of 's 1st Statement and that she was coereced into signing the statement; that the discrepancies noted by the director in the 2nd NOID are irrelevant; that the references in the 1st NOID to a phone call in 1999 are not true; and that the 2nd NOID did not address marriage fraud. However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).The discrepancies in the record were not resolved by independent, objective evidence.

A decision regarding the Form I-130 was issued by the district director of the USCIS office located in Chicago, Illinois on June 11, 2008. The decision denied the Form I-130 because the evidence established that the marriage was entered into for the purpose of evading the immigration laws of the United States; or, in the alternative, that the beneficiary and have attempted or conspired to enter into the marriage for the purpose of evading the immigration laws. The director determined that had not established by a preponderance of the evidence that the marriage was bona

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[14] *See Matter of Ho*, 19 I&N Dec. at 591-592 (states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence).

[15] The divorce decree states that abandoned the beneficiary and that the beneficiary does not know her whereabouts.

[16] The beneficiary married in the United States on November 21, 2003, although the marriage appears to have been registered in Pakistan on December 7, 2002.

[17] did not always use one spelling of the name, as the record herein shows.

fide.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], 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." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. at 590.

Section 204 of the Act governs the procedures for granting immigrant status. Section 204(c) provides for the following:

> Notwithstanding the provisions of subsection (b)[18] 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.

On August 4, 2008, the director sent a NOIR to the petitioner. The NOIR indicated that the Form I-130 filed on the beneficiary's behalf was denied on June 11, 2008, and that the basis of the denial was that the marriage between the beneficiary and [redacted] was entered into primarily to defraud and evade the immigration laws of the United States. Therefore, pursuant to Section 204(c) of the Act, the NOIR indicated that the approval of the Form I-140 should be revoked and the director granted the petitioner 30 days in which to submit evidence in support of the petition and in opposition to the revocation.

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 the approval of 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 finding of marriage fraud against the beneficiary that would warrant a denial of the Form I-140 if unexplained and unrebutted. Thus, the NOIR was properly issued for good and sufficient cause.

In response to the NOIR dated September 3, 2008, counsel submitted a brief, an affidavit from

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[18] 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.

dated September 2, 2008 ('s 3rd Statement),[19] an affidavit from dated September 2, 2008, and previously submitted documents relating to the denial of the Form I-130. 's 3rd Statement asserted that she and the beneficiary went for a bank account and "were refused due to my credit history;"[20] that the couple consummated the marriage and lived together after the marriage; that the beneficiary did not ask her to put his name on her child's birth certificate; that the beneficiary did not give her money for filing immigration paperwork; that she did not marry the beneficiary so that he "could get his green card;" that the "immigration police threatened me they would arrest me" and that she did not know what she was signing;[21] and that she had an affair while she was married to the beneficiary but that the only time she lived with her "partner" was when the beneficiary went to Pakistan in 1999.

Mr. 's affidavit stated that he maintained the property located at Illinois in 1998 and 1999 as the maintenance person; that the rental pickup and maintenance for the beneficiary's lease was assigned to him when the new owner, , bought the building in 1999; that the beneficiary and were tenants in the building; that was at the apartment "on a majority of occasions" when he went to collect rent and that she paid in cash because "her credit is bad and she cannot get a checking account;" and that the beneficiary and were living together as husband and wife. However, he did not mention a child living at the apartment with the couple, and the July 31, 1998 to July 31, 1999 lease does not list a child as a tenant. The leases in the record state that was the owner/authorized management agent of the premises and that rent was to be paid to Mr. at a post office box in , Illinois. It is not clear why Mr. would be tasked with personally collecting rent each month in contrast to the terms of the lease which required payment be made to a post office box. Further, no documents were submitted to establish that ownership of the premises was transferred in 1999 to ' ." *See Matter of Ho*, 19 I&N Dec. at 591(stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

On December 2, 2008, the director of the Nebraska Service Center revoked the approval of the I-140 visa petition. The NOR stated that there was substantial and probative evidence in the record leading to a reasonable conclusion that the marriage of the beneficiary and was entered into for the purpose of the beneficiary obtaining legal immigration status. The director noted the following:

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[19] 's last name was spelled " " on 's 3rd Statement.

[20] indicated in 's 2nd Statement that she co-signed an apartment lease for so he could stay at the apartment, presumably because she had good credit and he did not. It is unclear why her credit rating would be sufficient to allow her to serve as a guarantor on a lease, but insufficient to open a checking account. Her statements contradict each other and the inconsistencies have not been resolved by independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-592.

[21] did not indicate which papers she was referring to.

•The beneficiary entered the United States without inspection in 1996;

•The beneficiary and were married on May 30, 1997;

• obtained an Illinois Identification Card with the beneficiary's address and last name on the same date as the beneficiary's adjustment of status interview;

•The couple filed joint tax returns in 1997 and 1998, and neither tax return showed income for ; however, a letter from the manager of dated June 1, 1997 stated that had been working there since 1996 and that she was paid $7.00 per hour;[22]

•The beneficiary was detained at O'Hare International Airport on April 1, 1999 and placed in removal proceedings;

• made a sworn statement before two Immigration Officers at O'Hare International Airport indicating that her marriage to the beneficiary was not bona fide;

• 's 3rd Statement indicating that she did not know what she was signing when she signed the statement was less credible than the statement made to immigration officers;

•The denial of the Form I-130 was not appealed and is final; and

•The record does not establish the good faith of the marriage.

On appeal, counsel submits a brief and no additional evidence.[23] In that brief, counsel asserts that the delay in rendering a decision on the Form I-130 is a violation of due process;[24] that 's

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[22] Further, a letter dated September 13, 1998 from indicated that "has been working at the Indiana in a cafe from 7:30 to 4:00 Monday threw [sic] Friday and every other Saturday." also listed on Form I-134, Affidavit of Support, signed by her under oath on June 25, 1997, that she was a waitress with an annual income of $13,500.00. 's last name was spelled ' ' on Form I-134. The inconsistencies in the record regarding 's employment and income have not been resolved with independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-592(states that the petitioner must resolve any inconsistencies in the record by independent, objective evidence).

[23] Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

[24] There are no due process rights implicated in the adjudication of a benefits application. *See Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1050-51 (9th Cir. 2008); *see also Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment.").

1st Statement was taken without the presence of an attorney; that could not understand the contents of 's 1st Statement and that she signed the statement "fearing for her life;" that the parties lived together in that "did not live, during the course of the marriage in Indiana;" that had an affair during the course of her marriage and that she "stayed with her boyfriend during the period of time that the beneficiary travelled abroad;" that the beneficiary never asked to place his name of the birth certificate of her child; that the beneficiary's name has a number of spelling variations and chose one that "she has always used;" that the fact that obtained an identification card on the day of the beneficiary's adjustment of status interview is irrelevant; that it was "plausible" that the petitioner was working in one restaurant and met in another restaurant; that the beneficiary retracts the statements made in 's 1st Statement and that a copy of the Statement was not provided to the parties; that the references in the 1st NOID to a phone call in 1999 are not true and that the 2nd NOID did not address marriage fraud.

The standard for reviewing section 204(c) appeals is laid out in *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). 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 the 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. The record of proceeding contains evidence that a family-based immigrant petition was filed to obtain an immigration benefit for the beneficiary.

Specifically, 's 1st Statement clearly affirms that the marriage between and the beneficiary was entered into for the purpose of evading immigration laws; that was recruited to marry the beneficiary; that the couple never lived together; that documentation was fabricated to establish the bona fides of the marriage; that received money for her attendance at immigration related matters and that she resided with another man during the marriage and had a child with that man. voluntarily travelled to O'Hare International Airport to make and sign s 1st Statement. She swore to its truthfulness and swore that it was made freely and voluntarily. Therefore, counsel's claim that was coerced into signing 's 1st Statement without the benefit of counsel is without merit. As noted by the Chicago District Director in the 2nd NOID, the numerous discrepancies in the record are "striking" and have not been resolved with independent, objective evidence.

Where there is reason to doubt the validity of the marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the purpose of evading the immigration laws. Such evidence could take many forms, including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences. *See Matter of Soriano,* I&N Dec. 764 (BIA 1988).

In the instant case, the record contains evidence showing that was listed on a lease with the beneficiary for the period from August 1, 1997 through July 31, 1999; that she took the beneficiary's last name on certain documents in the record; that there are pictures of the beneficiary and together; that there is a joint gas bill in the record; and that the couple filed joint individual income tax returns in 1997 and 1998. However, as previously illustrated, discrepancies in the record regarding these documents and photographs have not been overcome with independent, objective evidence. Further, as noted by the Chicago field office director in the 1st NOID, there is no evidence of shared credit, jointly held bank accounts, jointly held insurance, or jointly owned property that would support an intent to establish a life together. There is no evidence regarding a courtship, a wedding ceremony, or other shared experiences such as vacations and gatherings with family and/or friends.

Therefore, 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 the 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 USCIS to have been entered into for the purpose of evading the immigration laws is affirmed.

Beyond the decision of the director,[25] the appellant also failed to establish that it is a successor-in-interest to the entity that filed the petition and labor certification. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the appellant is a different entity than the petitioner/labor certification employer, it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

In the instant case, the employer listed on the labor certification and Form I-140 petition is The petitioner was incorporated in the State of Illinois on August 6, 1999 with EIN 36-4313989. However, the petitioner was dissolved on January 3, 2005 in the State of Illinois. *See* http://www.ilsos.gov/corporatellc/CorporateLlcController (accessed January 31, 2013). The appellant appears to be a separate entity with the same name, , which was incorporated in the State of Illinois on February 14, 2005 with EIN 20-2338040. *See id.* In response to the AAO's Notice of Intent to Dismiss and Derogatory Evidence and Request for Evidence dated July 27, 2012 (Notice), counsel for the petitioner submitted federal tax returns for 2001 to 2010. The tax returns for 2001 through 2006 relate to the petitioner, , with

[25] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

EIN [redacted][26] and the tax returns for 2007 through 2010 relate to the separate entity, [redacted], with EIN [redacted][27] Counsel also submitted IRS Forms W-2 issued to the beneficiary from 2002 through 2011. The Forms W-2 for 2001 through 2007 relate to the petitioner, [redacted] with EIN [redacted] and the Forms W-2 for 2008 through 2011 relate to the separate entity, Sabri Nihari Inc., with EIN [redacted]

An appellant may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

The evidence in the record does not satisfy all three conditions described above because it does not fully describe and document the transaction transferring ownership of the predecessor,[28] it does not demonstrate that the job opportunity will be the same as originally offered, and it does not demonstrate that the claimed successor is eligible for the immigrant visa in all respects, including whether it and the predecessor possessed the ability to pay the proffered wage for the relevant periods.[29] Accordingly, the petition must also be denied because the appellant has failed to establish that it is a successor-in-interest to the petitioner/labor certification employer.

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[26] It appears that the petitioner continued to submit federal tax returns after its dissolution. Neither the 2005 or 2006 federal tax return is marked as a final return, and the petitioner claimed assets on its balance sheet at the end of 2006. Further, the petitioner issued the beneficiary a Form W-2 in 2007. The petitioner's 50% shareholder is listed as [redacted] on the tax returns. Ownership of the remaining 50% of the petitioner's shares is not detailed on the tax returns; however, an article submitted in response to the AAO's Notice indicates that the other shareholder is Mr. [redacted]s son, [redacted] It is unclear if this is the same individual who submitted the affidavit in support of the bona fides of the beneficiary's marriage to [redacted] discussed herein.

[27] The sole shareholder of the entity is listed on the tax returns as [redacted].

[28] In response to the Notice, counsel asserts that the petitioner has remained in business throughout the relevant period of time "but for a period of a couple of weeks in November 2006, when the Petitioner's location was destroyed by fire, and it relocated two blocks east on the same street." However, it appears that the petitioner was dissolved in February 2005.

[29] The 2007 Form 1120, U.S. Corporation Income Tax Return, for [redacted] includes handwritten changes to typewritten entries. It is unclear who made the changes, when they were made, and whether the changes were submitted to the IRS. USCIS requires an IRS-certified copy of an amended return to establish that the amended return was actually received and processed by the IRS. The amended return submitted by the petitioner is not a certified copy. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Thus, the AAO will not accept the 2007 tax return submitted on appeal.

Further, beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant,* 19 I&N Dec. 401, 406 (Comm'r 1986). *See also, Madany* v. *Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc.* v. *Coomey,* 661 F.2d 1 (1st Cir. 1981).

In the instant case, the labor certification states that the offered position has the following minimum requirements:

EDUCATION
Grade School: 8 years
High School: 4 years
College: blank
College Degree Required: blank
Major Field of Study: blank
TRAINING: One (1) year in food service
EXPERIENCE: Three (3) years in the job offered
OTHER SPECIAL REQUIREMENTS: Must work night shifts and weekends

The labor certification also states that the beneficiary qualifies for the offered position based on the following experience:

- As a specialty cook at [redacted] working 40 hours per week from June 1998 to December 2000;
- As a specialty cook at [redacted] working 40 hours per week from January 1993 to December 1993;
- As a head chef at [redacted] working 40 hours per week from January 1994 to May 1996.

No other experience is listed. The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

> Any requirements of training or experience for skilled workers, professionals, or other

workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The record contains the following experience and training letters and certificates:

•Letter dated December 12, 2000, from [redacted] in [redacted] Illinois, stating that the beneficiary worked as a Pakistani cook. The letter does not verify the dates of the beneficiary's employment, verify whether the beneficiary's employment was full or part-time, or state the title of the author of the letter.

•Letter dated December 19, 2002, from [redacted] of [redacted] in [redacted] Illinois, stating that the beneficiary worked as a Pakistani cook from June 1998 to December 2000. The letter does not verify the beneficiary's full-time employment or state the title of the author of the letter.

•Letter dated December 1, 1993 from [redacted] in [redacted] Pakistan, stating that the beneficiary worked as a cook for Pakistani dishes from January 1993 to December 1993. The letter does not verify the beneficiary's full-time employment or state the title of the author of the letter.

•Letter dated May 12, 1996 from [redacted] Pakistan, stating that the beneficiary worked as a head chef and managed kitchen duties from January 1994 to May 1996. The letter does not verify the beneficiary's full-time employment, does not mention any training received by the beneficiary, and does not state the title of the author of the letter.

•Letter dated May 12, 1996 from [redacted] Pakistan, stating that the beneficiary worked as a head chef from January 1994 to May 1996. Mr. [redacted] states that he was the head chef until the beneficiary was hired, and then he was in charge of corporate catering and marketing, as well as on-call chef duties. He states that he trained the beneficiary in food service and preparation from January 1994 to "the Spring of 1995." The letter does not verify the beneficiary's full-time employment and/or training.

•A ServSafe Certificate issued to the beneficiary on March 13, 2001 for successfully completing the requirements of the National Restaurant Association Educational Foundation for the ServSafe Food Protection Manager Certification Examination. The certificate does not detail the requirements for the examination.

•A certified foodservice manager certificate issued to the beneficiary on March 13, 2001 by the Chicago Department of Public Health for successfully completing the requirements of the Foodservice Manager Comprehensive Examination. The certificate does not detail the requirements for the examination.

•Two letters from Marketing Director for of Inc., stating that the beneficiary passed his foodservice sanitation certification exam and the foodservice manager comprehensive exam. The certificate does not detail the requirements for the examinations.

On the beneficiary's Form G-325A, Biographic Information, signed on June 13, 1997 and submitted to USCIS in connection with an adjustment of status application, in a section requiring him to list his employment for the last five (5) years, he stated:

•"None": June 1996 to present; and

Pakistan, Businessman 1990 to June 1996.

He does not list any other employment on that form.

Thus, during the time the beneficiary claimed on Form ETA 750B to be working full-time as a cook for (from January 1993 to December 1993) and as a head chef for (from January 1994 to May 1996), he claimed he was working as a businessman for (from 1990 to June 1996) on Form G-325A. His passport issued in February 1997 lists his profession as a "businessman."

Further, on the beneficiary's Form G-325A, Biographic Information, signed on October 17, 2002 and submitted to USCIS in connection with an adjustment of status application, he stated "none" in a section requiring him to list his employment for the last five (5) years. He also left blank a section requiring him to list his last occupation abroad.

Thus, during the time the beneficiary claimed on Form ETA 750B to be working as a Pakistani cook at , Illinois (from June 1998 to December 2000), he claimed he was unemployed on Form G-325A. His 1998 individual federal income tax return shows self-employment income earned that year, but it does not indicate that he was an employee of or otherwise earned income from that restaurant in 1998. Further, his 1997 individual federal income tax return shows self-employment income earned that year, but it does not indicate where the income was earned and no employment was listed any other documents in the record for 1997.

Additionally, a 2002 IRS Form W-2 issued by the petitioner to the beneficiary indicates that the petitioner paid the beneficiary $18,000 in 2002. However, the beneficiary stated he was unemployed on Form G-325A as of October 17, 2002, the date he signed the G-325A.

Matter of Ho, 19 I&N Dec. at 591-592, states:

> [i]t is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

The record does not contain independent, objective evidence resolving the inconsistencies in the beneficiary's work and training history. Therefore, the petitioner has also not established that the beneficiary is qualified for the offered position.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The approval of the employment-based immigrant visa petition remains revoked.