(b)(6)

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

DATE: MAY 28 2013 OFFICE: TEXAS 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 with the field office or service center that originally decided your case by filing a 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,

Rachel M Incio for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Texas Service Center. In connection with the beneficiary's Form I-130, Petition for Alien Relative, 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 initially revoked the approval of the Form I-140, Immigrant Petition for Alien Worker, on January 31, 2012. The director granted the petitioner's subsequent motion to reopen the matter in order to consider material previously submitted in response to the NOIR. The director ultimately revoked the approval of the Form I-140 petition again on April 24, 2012. 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 manufacturer of medical equipment utilizing lasers. It seeks to employ the beneficiary permanently in the United States as a medical device engineer. The petition was filed for classification of the beneficiary as a professional with an advanced degree under section 203(b)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1153(b)(2).[2] As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

The petitioner's ETA Form 9089 was accepted for processing by the DOL on January 20, 2011. The petitioner subsequently filed the Form I-140 petition with USCIS on February 25, 2011, which was approved on March 4, 2011. The merits of the Form I-140 petition have never been in question.

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 August 18, 2004. 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 U.S. citizen. The file contains the completed forms, signed by the beneficiary, photographs, and an original marriage certificate between the beneficiary and Melimar Colon Santiago.

In connection with the Form I-130, a decision was issued by the district director of the United States Citizenship and Immigration Services (USCIS) office located in Miami, Florida on October 21, 2005. The decision acknowledged the withdrawal of the Form I-130 petition at the U. S. citizen

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[2] Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

petitioner's request based upon her admissions in a signed sworn statement in the Spanish language provided on October 20, 2005 during an interview with a USCIS officer regarding the *bona fides* of her marriage. Specifically, the decision noted that admitted that she had entered into the marriage with the beneficiary because he had asked her a favor in helping him obtain his residency for a job and that the beneficiary had offered her $6,000.00 and paid her $250.00 a month.

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)[1] 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.

On November 1, 2011, the director sent a NOIR to the petitioner stating the following in pertinent part:

> On August 23, 2004, a Petition for Alien Relative (Form I-130) was filed on behalf of the beneficiary by a United States citizen, along with an Application to Register Permanent Residence or Adjust Status (Form I-485). The record shows the petitioner and beneficiary were married on July 1, 2004, in Miami Florida. On October 20, 2005, the petitioner and beneficiary were interviewed by a USCIS officer in regards to the bona fides of the marriage. The petitioner submitted a sworn statement during the marriage interview in which she stated that the beneficiary asked me for a favor to help him obtain his residency for a job, he asked me to marry him. I live in Salinas, P.R. and he offers me $6,000 and gave me $250 monthly [sic]." The beneficiary also submitted a sworn statement on October 20, 2005 during the marriage interview, in which the beneficiary states "I asked to marry me, to be able to get my green card to work, lives in Pto Rico – every month I give 250 USD for total 3500. I was going to give 2000 after green card [sic].
>
> The signed sworn statements provided by the I-130 petitioner and beneficiary during a marriage interview with a USCIS officer are substantial and probative evidence that the beneficiary's prior marriage was entered into for the purpose of evading immigration laws.

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[1] 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.

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, pointing out the prior marriage fraud engaged in by the beneficiary, that would warrant a denial if unexplained and unrebutted, and thus was properly issued for good and sufficient cause.

In response to the NOIR, counsel provided a statement in which he asserted that the beneficiary and entered into a *bona fide*, truthful marriage on July 1, 2004. Counsel claimed that the marriage was not entered into for the purpose of evading U.S. immigration laws. In support of the response, counsel submitted the following relevant documentation:

- An affidavit dated November 28, 2011, that is signed by the beneficiary who provided a detailed account of how he and met, married, separated, and eventually divorced. The beneficiary recounted the interview regarding his marriage to with a USCIS officer in October 2005, and described the USCIS officer's behavior during the interview as unprofessional. The beneficiary stated that he had not given any money to obtain a green card to find a job. The beneficiary declared that he already had H1B1 visa status in the United States, a paid off car, friends, and a house in Miami, Florida that had been paid for by his father. The beneficiary asserted that he been offered a job opportunity and paid for a labor certification to obtain a green card through his employer at The beneficiary admitted sending money to on three occasions in 2005, $450.00 on January 18, 2005, $250.00 on February 28, 2005, and $250.00 on March 28, 2005, to pay her living expenses while she was staying with her mother in Puerto Rico. The beneficiary noted that it was not necessary or in his character to ask to marry him for papers, and that he had always looked at her as his wife and never entered into the marriage to defraud the United States Government.

- An affidavit dated November 28, 2011, that is signed by who provided a detailed account of how she and the beneficiary met, married, separated, and eventually divorced. recounted that she was interviewed on October 20, 2005 by a USCIS officer regarding her marriage to the beneficiary, and claimed that the USCIS officer was very intimidating and put a lot of pressure on her to sign the sworn statement. declared that she loved the beneficiary and married him for love. acknowledged that she was very young and that she and the beneficiary may have rushed their relationship but that she did not

marry the beneficiary to help him for his immigration papers. stated that her marriage to the beneficiary was a *bona fide*, truthful marriage and that the beneficiary had never offered her $6,000.00 to marry him and he never paid her $250.00 a month for immigration benefits. stated that the beneficiary sent money to her on three occasions in 2005 to pay her living expenses while she was staying with her mother in Puerto Rico.

- A copy of a representation agreement dated January 24, 2004 between the beneficiary and a law firm reflecting his attempt to obtain "Legal Permanent Residence through Labor Certification."

- Bank statements for a checking account dated January 5, 2005, February 8, 2005, March 14, 2005, April 12, 2005, and May 11, 2005, respectively, from Bank of America that are addressed to

- A bank statement for a savings account dated January 5, 2005 from Bank of America that is addressed to

- Bank statements for a checking account dated February 4, 2005, March 10, 2005, April 8, 2005, and May 19, 2005, respectively, from that are addressed to beneficiary at '

- Bank statements for a savings account dated January 25, 2005, February 22 2005, March 25, 2005, and April 25, 2005, respectively, from that are addressed to beneficiary at '

- Credit card statements for a VISA card dated February 8, 2005, April 8, 2005, and June 8, 2005, respectively, from Capital One that are addressed to the beneficiary at

- Statements for a ChevronTexaco credit card dated December 25, 2004 and May 25, 2005, respectively, that are addressed to the beneficiary at

- Credit card statements for a VISA card dated February 7, 2005 and April 2, 2005, respectively, from Bank of America that are addressed to the beneficiary at

- Credit card statements for a VISA card dated February 3, 2005, April 8, 2005,

and May 9, 2005, respectively, from Bank of America that are addressed to

- A bill from Honda Financial Services dated October 5, 2005, for the monthly payment of due on a loan for a 2005 Honda Accord that is addressed to the beneficiary at in Miami, Florida.

- A bill from BellSouth dated April 8, 2005, in the amount of for telephone services that is addressed to the beneficiary at in Miami, Florida.

- Two bills from Florida Power and Light dated February 2, 2005 and May 3, 2005, respectively, for electrical services that are addressed to the beneficiary at " in Miami, Florida.

- Documentation prepared by Jackson Hewitt Tax Service reflecting the electronic filing of Forms 1040, U.S. Individual Income Tax Return, for 2004 and 2005 by the beneficiary and with status of married filing jointly and an address of in Miami, Florida.

- Two Forms W-2, Wage and Tax Statement, issued by Systems, Inc., and Inc., respectively, to the beneficiary in 2005 and listing his address as in Miami, Florida.

- A Form W-2 statement issued by Systems, Inc., to the beneficiary in 2004 and listing his address as in Miami, Florida.

- Letters from the beneficiary's family, friends, co-worker, and landlord, all of whom attest to the beneficiary's comportment, integrity, character, work ethic, and professionalism in the years they have known him. Several of these individuals also attest to having attended the wedding ceremony of the beneficiary and and subsequent party.

- A letter dated November 21, 2011 that is signed by of Systems, who stated that he hired the beneficiary as an installation engineer in his capacity as for this enterprise. noted that the beneficiary had been employed by Systems from October 3, 2005 to November 5, 2009, and provided a detailed description of the beneficiary's job duties.

- Photographs of the wedding ceremony of the beneficiary and

> and subsequent party, as well as a DVD containing these same photographs and another DVD containing a video recording of the wedding ceremony approximately nine minutes in length.

The director initially revoked the approval of the Form I-140 petition on January 31, 2012, based upon the erroneous conclusion that the petitioner had failed to submit a response to the NOIR. The director granted the petitioner's subsequent motion to reopen the matter in order to consider material previously submitted in response to the NOIR. The director ultimately revoked the approval of the Form I-140 petition again on April 24, 2012, determining that the response and supporting evidence were not sufficient to overcome the fact both the beneficiary and admitted in separate signed sworn statements that their prior marriage was entered into for the purpose of evading immigration laws.

On appeal, counsel asserts that the beneficiary and married each other for love and their marriage fell apart for numerous reasons including their age and their living location after returned to Puerto Rico. Counsel contends that the detailed affidavits of the beneficiary and and other supporting documents submitted in response to the NOIR are overwhelming evidence of the validity of their marriage and sufficient to rebut the erroneous conclusion that the beneficiary and engaged in marriage fraud. Counsel claims that the beneficiary had alternative means of obtaining his permanent residency through his employment with Universal Security Systems Inc. rather than pay someone for marriage and residency. Counsel states that evidence has been submitted demonstrating that the beneficiary sent money to on three occasions in 2005 to pay her living expenses while she was staying with her mother in Puerto Rico. Counsel notes that was only nineteen years of age at the time of the interview with the USCIS officer on October 20, 2005, and provided her signed sworn statement of that same date "under the duress and influence of the immigration officer." Counsel continues in pertinent part:

> There are interviewing officers that make it their mission to deny cases and to ascertain information from applicants and place pressure on them to sign or make statements that are not accurate or true. Unfortunately, [the beneficiary] were placed in a vulnerable situation with an officer that placed a lot of pressure on the both of them to not only withdraw the petition, but to sign a statement that was false, i.e. that married in exchange for money and for the residency.

Counsel includes copies of the documents that were previously submitted with the response to the NOIR. Counsel also submits a copy of the USCIS approval notice dated September 24, 2003 for an H1B1 nonimmigrant visa petition filed on the beneficiary's behalf by Universal Security Systems Inc., as well as the beneficiary's federal tax returns and related documents for 2006, 2007, 2008, 2009, and 2010.

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 Form I-130 family-based immigrant petition was filed to obtain an immigration benefit for the beneficiary. As discussed previously, the record shows that on October 20, 2005, the U.S. citizen petitioner, [redacted], and the beneficiary were interviewed by a USCIS officer in regards to their marriage. Both [redacted] and the beneficiary provided signed sworn statements in which they admitted that they got married so that the beneficiary could obtain his permanent residence and a job and that the beneficiary had paid [redacted] to do so. The record further shows that [redacted] also requested that USCIS withdraw the Form I-130 petition that she filed on behalf of the beneficiary on this same date.

The signed sworn statements provided by the Form I-130 U.S. citizen petitioner and the beneficiary during a marriage interview with a USCIS officer are substantial and probative evidence that the beneficiary's prior marriage was entered into for the purpose of evading immigration laws. Although counsel submits new affidavits from the beneficiary and [redacted], both of whom attest to validity of their marriage, as well as letters from family, friends, and acquaintances, these documents are not sufficient evidence to persuasively rebut their prior signed sworn statements in which they both admitted that they married so that the beneficiary could obtain his residency.

On appeal, counsel claims that the beneficiary had alternative means of obtaining his permanent residency through his employment with [redacted] rather than pay someone for marriage and residency. The record contains a copy of the USCIS approval notice dated September 24, 2003 for an H1B1 nonimmigrant visa petition filed on the beneficiary's behalf by [redacted] and a copy of a representation agreement dated January 24, 2004 between the beneficiary and a law firm reflecting his attempt to obtain "Legal Permanent Residence through Labor Certification." However, the approved H1B1 petition filed by [redacted] Inc. was for a nonimmigrant visa rather than an immigrant visa and did not provide the beneficiary with an alternative means of obtaining his permanent residency through employment. In addition, the representation agreement dated January 24, 2004 between the beneficiary and a law firm reflecting his attempt to obtain "Legal Permanent Residence through Labor Certification" is minimally probative as it does not identify the employer submitting the labor certification and corresponding Form I-140 petition on the beneficiary's behalf.

Counsel states that evidence has been submitted demonstrating that the beneficiary sent money to [redacted] on three occasions in 2005 to pay her living expenses while she was staying with her mother in Puerto Rico. As noted above, the record contains the bank statements for a Bank

of America checking account attributed to [redacted] that are dated February 8, 2005, March 14, 2005, and April 12, 2005, and May 11, 2005, respectively. While these statements show deposits of $450.00 on January 18, 2005, $250.00 on February 28, 2005, and $250.00 on March 28, 2005, the statements list these deposits as "Counter Deposit" in each instance without providing any indication of the source of the payment. Furthermore, the beneficiary's Bank of America statements for his checking and savings accounts during the same general period, January 2005 to May 2005, do not reflect any corresponding payments, checks, or transfers in these amounts and both savings and checking account have consistent average balances below these amounts.

Counsel, the beneficiary, and [redacted] all claim that the USCIS officer who conducted the interviews on October 20, 2005 pressured the beneficiary and [redacted] to provide the signed sworn statements of that same date under duress and undue influence. Counsel asserts that the USCIS officer was predisposed to denying their case and placed pressure on both the beneficiary and [redacted] to withdraw the Form I-130 petition and sign false statements regarding the validity of their marriage. However, the notes of the USCIS officer who interviewed the beneficiary and [redacted] reveal that this officer conducted a thorough and professional inquiry in an effort to determine the validity of their marriage. The record contains no indication that either the beneficiary or [redacted] was coerced or forced to provide false statements or information during the interview, but instead voluntarily provided the signed sworn statements and withdrew the Form I-130 petition. Without any independent evidence to corroborate the claims put forth by counsel, the beneficiary, and [redacted] regarding the purported behavior of the USCIS officer who conducted the interview on October 20, 2005, such claims cannot be considered as persuasive. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.

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