

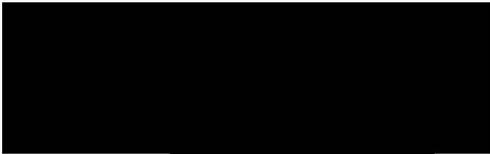
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U.S. Citizenship
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Services

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FILE: [REDACTED]
SRC 05 040 51049

Office: TEXAS SERVICE CENTER Date: **AUG 16 2006**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established that he qualifies for classification as an alien of extraordinary ability.

We concur with the findings stated in the director's August 18, 2005 notice of denial. The petitioner's appellate submission includes no arguments or evidence addressing the pertinent regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner has not specifically addressed the reasons stated for denial and has not provided any additional evidence.

On July 6, 2006, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he is not entitled to an approved petition pursuant to the marriage fraud provisions of section 204(c) of the Act.. The AAO's notice stated:

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states:

Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 C.F.R. § 204.2(a)(1)(ii) states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A "State of New Jersey Certificate of Marriage" issued by the Municipal Court of Palisades Park, New Jersey indicates that you married [REDACTED] a United States citizen, on July 24, 2003. On November 7, 2003, that individual filed a Petition for Alien Relative, Form I-130, in your behalf. On August 4, 2004, you both appeared before a U.S. Citizenship and Immigration Services (CIS) officer at the Newark District Office for a marriage interview. On that same date, your spouse executed the following sworn statement:

My name is [REDACTED] I am currently residing at [REDACTED] Bronx, New York - 40160. I live there with my mother, [REDACTED] I have been living there for about 17 years now. I have never lived in New Jersey. I obtained an identification card issued by the Bergen County and the only reason I obtained it was to try and show that I live in New Jersey, but I don't. I did this so that I could project that I am living with him. I am sorry for this and want to give this ID Card to you so that you can keep it.

I am not taking any medication and I am not under the influence of any drugs or alcohol.

I do understand that the information I am about to give the officer is of free will, thus being sworn under oath to be the truth. I do realize that defrauding the government in any way can result in a fine and/or imprisonment.

My spouse, [REDACTED] lives at [REDACTED] He has been living there since 2002 and he lives there alone.

I was introduced to [REDACTED] through a friend, [REDACTED]

[REDACTED] approached me with this marriage proposal and asked me to help him obtain permanent residency status.

I accepted the marriage proposal and agreed to his request to help him.

I married [REDACTED] on July [REDACTED]

I went to get our marriage photos done by his friend, so that I could pose as his wife for his green card interview. I have never been intimate with him.

I have never lived with [REDACTED] s wife and husband.

I have never consummated (had sex) the marriage with [REDACTED]

I married [REDACTED] so that he could get a green card.

I have received money from him in the past and he pays for my living expenses from time to time. I have received about U.S. \$2,000 to U.S. \$2,500 up until now from him in return for this marriage.

The only reason I married him was because I was trying to help him get a green card.

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

Kahy, 19 I&N Dec. 803 (BIA 1988). Testimony by the spouse, admitting knowledge of the fraudulent nature of the marriage, constitutes evidence of an attempt or conspiracy for the purposes of 8 C.F.R. § 204.2(a)(2)(ii). *Id.* at 807, n.3.

The marriage certificate, sworn statement, and other documentation submitted in support of the Form I-130 petition indicate that you attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. Given this evidence, federal law prohibits the approval of any petition (including any employment-based immigrant petition) filed in your behalf.

The petitioner was afforded 15 days in which to submit evidence to overcome the derogatory information cited above.

The petitioner failed to respond to the AAO's notice. Therefore, we conclude that the petitioner has not disputed the information set forth in the AAO's July 6, 2006 notice. We affirm our finding that the petitioner has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. Pursuant to section 204(c) of the Act, neither this petition, nor any future petition filed on his behalf may be approved.

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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

FURTHER ORDER: The evidence establishes that the petitioner has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws of the United States. Therefore, pursuant to section 204(c) of the Act, neither this petition, nor any future petition filed on his behalf may be approved.