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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 03 2009
LIN 06 241 51415

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner is a primary care provider. It seeks to employ the beneficiary permanently in the United States as its Director of Administration and Finance pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, 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. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL).

The director did not reach the merits of the beneficiary's eligibility pursuant to section 203(b)(2) of the Act. Rather, the director concluded, pursuant to section 204(c) of the Act, that approval of the petition was precluded based on the beneficiary's prior attempt to secure immigration benefits through a fraudulent marriage.

On appeal, counsel submits a brief and additional evidence, including evidence purporting to show that there is no record of the beneficiary's marriage to the United States citizen who appears to have filed an immigrant petition on his behalf. The beneficiary submits an affidavit in which he admits that he signed "a blank paper" in order to obtain an immigration benefit, but disclaims specific knowledge of the fraudulent Form I-130 and accompanying fraudulent Form I-485, both of which reflect his name in the signature blocks. He asserts that another individual must have submitted both the Form I-130 and Form I-485 without his knowledge or consent. As will be discussed, we are not persuaded by the beneficiary's attempt to shift accountability to another individual.

I. Sections 204(c) and 212(a)(6)(C)(i) of the Act

Section 204(c) of the Act provides:

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 Attorney General 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.

The regulation at 8 C.F.R. § 204.2(a)(1)(ii) provides:

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.

Section 212(a)(6)(C)(i) of 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.

The A-file record of proceeding contains a Form I-130, Petition for Alien Relative, filed by G- T-¹ on October 21, 1994 on behalf of the beneficiary as her husband. The marriage-based petition was accompanied by an October 28, 1993 New York Certificate of Marriage Registration for the beneficiary (reflecting his correct name and date of birth) and G- T- in Mount Vernon, New York. The certificate does not bear a seal although there is a space designated "(SEAL)." The Form I-130 and Certificate of Marriage Registration both list a New York address for the beneficiary. Concurrently filed with the Form I-130 in 1994 was a Form I-485. The Form I-485 reflects the beneficiary's signature in and lists a New York address.

The following documents were submitted in support of the 1994 Forms I-130 and I-485:

- A birth extract listing the same parents and place of birth as those listed on the beneficiary's Form G-325A Biographic Information. (The Form G-325A was signed by the beneficiary on July 17, 2006, and submitted in support of his second, most recent Form I-485 Application to Register Permanent Residence or Adjust Status (receipt number LIN 06 241 51363)).
- Pages of the beneficiary's passport number [REDACTED] issued August 7, 1990, and bearing the beneficiary's correct name and date of birth. (The beneficiary submitted a copy of the same passport number [REDACTED] in support of his recent Form I-485, Supplement A, filed on January 14, 2008 (receipt number LIN 06 241 51363)).
- A copy of the beneficiary's J-1 nonimmigrant visa allowing him to attend Central Missouri State University.
- A Form FD-258 fingerprint card signed by the beneficiary.

The 1994 Forms I-130 and I-485 were denied on March 22, 1996 for failure to appear for a scheduled interview.

¹ Name withheld to protect individual's identity.

In support of the beneficiary's subsequent 2006 Form I-485, the beneficiary signed a Form G-325A indicating that he married his current wife in 1991 in Pakistan and that he had no prior spouses.

On October 17, 2007, the director issued a notice of intent to deny the instant Form I-140 petition. The director cited section 204(c) of the Act, quoted above, and concluded that the beneficiary's marriage to G- T- was entered into fraudulently in an attempt to obtain immigration benefits. In response, the petitioner submitted a January 11, 2008 affidavit from the beneficiary asserting that he had no knowledge of the 1994 Form I-485 and that he did not file it. The beneficiary further asserted that he has been married only once, to his current spouse whom he married in Pakistan in 1991. The petitioner submitted a joint bank statement for the beneficiary and his current spouse from 1994 listing a Missouri address.

In his final decision, the director noted that the ADIT-style photographs, birth extract, signatures, J-1 nonimmigrant visa, and passport submitted with the 1994 Forms I-130 and I-485 match the beneficiary's personal information and documents and could not have been submitted in support of those forms without the beneficiary's "knowledge or consent." Thus, the director concluded that the beneficiary's attestations did not overcome the evidence of record.

On appeal, the petitioner submits an April 11, 2008 affidavit from the beneficiary in which he states that he met with an individual in Florida who held himself out as a paralegal in order to obtain work authorization. He confirms that he provided this individual with two photographs, his passport and a copy of his driver's license. He claims that he provided the paralegal with his personal information and was fingerprinted. The beneficiary specifically states that he was asked to "sign [his] name on a blank paper." The petitioner submits a March 25, 2008 document from the City of New York Office of the City Clerk advising that no record of the beneficiary's marriage to G- T- exists from 1990 through the present in "all five boroughs of New York City." However, the beneficiary's marriage certificate to G- T- reflects that the marriage took place in Mount Vernon, NY, which is within Westchester County, NY, and not within one of the five boroughs of New York City. Thus, this document is of no value.

It is important to note that although the beneficiary has made claims against a paralegal in Florida, he has failed to provide any corroborating evidence to establish that he hired the paralegal to seek an immigration benefit on his behalf. No individual signed the fraudulent Form I-130 and Form I-485 as a preparer. Accordingly, all of the evidence in the current record of proceeding shows that the beneficiary used documents and personal data to which only he had access in order to seek adjustment of status based on a fraudulent 1994 marriage, without first divorcing his Pakistani spouse. It is also important to note that the petitioner's response does not challenge the director's finding that the Form I-130 and Form I-485 were fraudulent.

We cannot ignore that the petitioner signed the 1994 Form I-485, thereby certifying under penalty of perjury that "this petition and the evidence submitted with it are all true and correct." Only in response to the director's February 19, 2008 decision has the petitioner acknowledged that his submissions were fraudulent. In his April 2008 version of events, he freely admits that he traveled from Missouri to Florida to seek employment, and subsequently engaged a paralegal in Florida to

obtain work authorization for him. He also admits that he allowed his passport to be used, that he submitted to photographs and fingerprints (in addition to the Form I-485, the beneficiary signed the Form FD-258 fingerprint card), that he provided his biographic data to the paralegal, and that he signed a blank document. He does not equivocally say that he did not sign the fraudulent Form I-485, instead demurring that he does “not recall if I signed any immigration paperwork.”

There is no evidence that the beneficiary ever attempted to have the fraudulent Form I-130 and accompanying Form I-485 adjustment application withdrawn. In fact, the beneficiary admits that he not only received employment authorization shortly after providing all of the above information to the paralegal, but that he attempted to have his employment authorization renewed one year later in 1996. He claims that he thought that he received the employment authorization based on “hardship,” but this is not a credible claim. After August 13, 1994, the only employment available to him would have been that authorized to him through Mississippi State University as an F-1 nonimmigrant student.² He clearly understood this and admitted in his April 2008 affidavit that, rather than seek authorized employment through the University, he traveled to Florida to seek employment opportunities there. He admits that he received work authorization in 1995 and claims that “this was confirmation that my hardship application had been approved.” He does not state whether he thought his “hardship application” had been revoked when legacy INS declined to renew his work authorization in 1996. Regardless, he never completed his doctoral studies and instead remained in Florida and first using his fraudulently obtained work authorization to work at various companies in Orlando, and then working without authorization from 1996 until late 1997. In support of his April 2008 affidavit, the beneficiary submitted Internal Revenue Service (IRS) income tax Forms 1040 and W-2s for 1995, 1996, and 1997 showing that he resided and worked in Orlando.

In short, the beneficiary’s most recent version of events is this: he entered the United States in order to complete a doctoral program. Shortly after his entry, he deliberately abandoned his studies in order to seek employment in Florida. Upon arriving in Florida, he hired a paralegal to help him obtain work authorization. One year after receiving the work authorization (and after working at Speedy Photo and Video, and Big Bargain World, Inc.) he sought to renew his work authorization, but was not renewed. Although the beneficiary’s fraudulently-obtained work authorization was not renewed, he remained in Florida and continued working at various entities without authorization until a Form I-129 H-1B nonimmigrant petition was approved on his behalf late in 1997. There is simply nothing in the beneficiary’s version of events to suggest that the beneficiary was victimized by another individual.

² A copy of a Form I-94 Departure Record shows that the beneficiary entered the United States on August 13, 1994 as an F-1 nonimmigrant student to complete a two-year course of doctoral studies at Mississippi State University. F-1 nonimmigrants are generally not authorized to work. *See* 8 C.F.R. §§ 274a.12, 214.2(f)(9). There is no evidence that the beneficiary ever commenced or completed the doctoral studies that served as the basis for his F-1 nonimmigrant status. In fact, the petitioner has provided USCIS with 1995 and 1996 Form 1040 tax returns showing that he lived and worked in Orlando, FL during the time he was supposed to be at Mississippi State University.

In response to the director's notice of intent to deny, the beneficiary insisted that the fraudulent Form I-130 and I-485 were "a mystery to me" and suggested that "the Service Center has mixed my file with someone else's file" or that someone filed a fraudulent petition without his knowledge. Only in response to the director's notice of denial did the beneficiary admit that the fraudulent Form I-130 marriage petition and Form I-485 were probably filed when he sought to obtain work authorization in 1994. An alien's timely and voluntary retraction of his false statement may serve to excuse the misrepresentation, but the retraction may not simply be in response to the actual or imminent exposure of his falsehood. *See Rahman v. Mukasey*, 272 Fed. Appx. 35, 39 (2nd Cir. 2008) (unpublished) (citing *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973); *Matter of Ngan*, 10 I&N Dec. 725, 727 (BIA 1964); *Matter of M*, 9 I&N Dec. 118, 119 (BIA 1960)). Until USCIS confronted the petitioner with the misrepresentations regarding his marriage to G- T-, he was content to have participated in the submission of a fraudulent marriage-based Form I-130 and Form I-485 in order to receive temporary work authorization otherwise unavailable to him.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). U.S. Citizenship and Immigration Services (USCIS) may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990). We may, however, rely on any relevant evidence, including evidence having its origin in prior immigration proceedings involving the alien. *Id.*

As stated above, the Certificate of Marriage Registration bears no seal. As such, it is unclear whether the certificate is valid. However, when confronted with the existence of the certificate, the petitioner has failed to provide evidence demonstrating that it is not valid. As discussed, the marriage certificate is from Mount Vernon, NY. The only evidence that the petitioner has provided that relates to the validity of the certificate is a letter from the City of New York Office of the City Clerk stating that there is no evidence of the beneficiary's marriage for all five boroughs of New York City. However, as discussed, Mount Vernon lies outside the five boroughs of New York City; therefore, the "no record" letter is meaningless.

Even if the petitioner's marriage certificate to G- T- is itself fraudulent, section 204(c) of the Act still applies. It would be absurd to allow any alien to evade the consequences of section 204(c) of the Act by failing to apply this provision to aliens who have committed additional fraudulent acts by submitting fake marriage certificates. Section 204(c) of the Act provides that no petition shall be approved if the alien "has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws." Section 204(c) of the Act was amended by section 4(a) of the Immigration Marriage Fraud Amendments of 1986 (IMFA), Pub. L. No. 99-639, 100 Stat. 3537, 3543 (1986). Prior to IMFA, Congress held hearings on fraudulent marriage and fiancé arrangements and discussed the following fraudulent acts that aliens had committed in order to obtain immigration benefits: concealment of prior undissolved marriages, issuance of counterfeit New York City marriage certificates in support of petitions for permanent residence, and use of "stolen identification documents and stand-in grooms and brides to 'marry' U.S. citizens." *See Hearing before the Subcommittee on Immigration and Refugee*

Policy of the Committee of the Judiciary United States Senate, Ninety-Ninth Congress, July 26, 1985 at 12, 16, and 68. After the hearing, Congress enacted IMFA and added section 204(c)(2) of the Act, 1000 Stat. at 3543. "Paper" marriages are now covered by the "...attempted...to enter into a marriage" language of the statute. Based on the scenarios discussed in the 1985 hearing and the subsequent amendment to the Act, Congress clearly intended that section 204(c) of the Act be applied to aliens who seek an immigration benefit through a fraudulent marriage, even in cases where there is no marriage in fact.

In any event, as discussed, the petitioner has not established that the marriage certificate itself is fraudulent, or that the beneficiary was unaware of the preparation and filing of the fraudulent Form I-130 and Form I-485. The inclusion of the beneficiary's personal information, birth extract, J-1 nonimmigrant visa and passport, his admission that he traveled to Florida to seek out an individual to help him obtain work authorization, his admission that he signed a document for this purpose and that he was photographed and fingerprinted, and the presence of his signature the Form I-485 and on the 1994 Form FD-258 fingerprint card demonstrate that the beneficiary was involved in the 1994 submission. In light of the above, we find that approval of the petition is precluded under section 204(c) of the Act based on the beneficiary's attempt or conspiracy to enter into a fraudulent marriage to obtain immigration benefits.

II. Section 245(i) of the Act

Beyond the director's decision, the petitioner has not established that the beneficiary would be eligible for grandfathering in accordance with section 245(i) of the Act. First, although the petitioner has submitted a certified Department of Labor (DOL) Form ETA 750, the form provided to USCIS is a copy. The regulation at 8 C.F.R. § 103.2(b)(4) requires that the petitioner provide USCIS with an original labor certification. Based on this failure alone, the petitioner has failed to establish section 245(i) eligibility and the petitioner may not be approved. In addition, section 245(i) of the Act applies to an otherwise admissible alien. In this case, because the beneficiary has attempted to engage in marriage fraud, he is inadmissible under sections 204(c) and 212(a)(6)(c)(i) of the Act. For this additional reason, the beneficiary is ineligible for section 245(i) benefits.

III. Beneficiary's Employment History May be Falsified

Beyond the director's decision, the record is inconsistent regarding the beneficiary's employment history. On April 30, 2001, the Islamic Circle of North America filed a Form ETA 750 Application for Alien Employment Certification with DOL on behalf of the beneficiary. The beneficiary signed the Form ETA 750B under penalty of perjury indicating that he had worked for MSI Financial Services Corporation in Texas from November 30, 1997 through February 1998. The beneficiary indicated the same employment information on the ETA Form 9089, Part J, accompanying this petition. The record contains the approval notice for a nonimmigrant visa petition filed by MSI dated September 26, 1997 and the beneficiary's Form I-94 for his November 13, 1997 entry into the United States on an H-1B nonimmigrant visa. In support of the petition, however, the petitioner submitted a July 19, 2004 letter from [REDACTED] President and Chairman of the Board of MSI from 1997 through 2001, asserting that the beneficiary worked for MSI from April 1997 through March 1998 as their Financial Operation

Officer. The beneficiary's passport shows an entry into Saudi Arabia on a non-employment visa on March 11, 1997, and there is no indication of the date of departure. Based on all of these conflicting claims, it is unclear whether the beneficiary worked at MSI Financial Services from April 1997 or from November 1997.

Moreover, the website for the Texas Comptroller of Public Accounts allows for a search of taxable entities. See <http://ecpa.cpa.state.tx.us>. The database lists two similarly titled entities: MSI Financial Services Corporation () and M S I Financial Services Corporation (). A search for MSI Financial Services Corporation shows that it was not in good standing as of September 25, 2008 and remains so. "M S I Financial Services Corporation" had "Temporary Good Standing" as of September 25, 2008 but no longer has such standing. The results of these searches, performed September 25, 2008, and again on May 11, 2009, have been incorporated into the record of proceeding. It is unclear which of these two companies the beneficiary worked for, and if that company was in good standing during the period that the beneficiary was employed.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. 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, *id.* at 591. The record does not resolve the above inconsistencies. Moreover, 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. *Id.* Given the beneficiary's history of fraudulently seeking immigration benefits and the inconsistencies discussed above, the remaining evidence of the beneficiary's experience is suspect.

The beneficiary's experience is material because the Form ETA 750A indicates that the job requires two years of experience in the job offered or in the position of director of finance. The regulation at 20 C.F.R. § 656.30(d) provides:

After issuance labor certifications are subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies, procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to a RA or to the Director, the RA or Director, as appropriate, shall notify in writing the INS or State Department, as appropriate. A copy of the notification shall be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

In light of the above, even if the AAO did not uphold the director's basis for denial, the AAO would pursue invalidation of the underlying alien employment certification pursuant to 20 C.F.R. § 656.30(d).

ORDER: For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. As always in these proceedings, 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, and the petition will be denied.