

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



B5

DATE: NOV 26 2012 OFFICE: NEBRASKA SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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:

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.

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is an audio components manufacturer and distributor. It seeks to employ the beneficiary permanently in the United States as an engineering program manager under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an Application for Permanent Employment Certification, ETA Form 9089, certified by the United States Department of Labor (DOL).

In a decision dated June 22, 2010, the Director determined that the marriage fraud bar under section 204(c) of the Act applies to the case and denied the petition accordingly.

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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

As set forth in the Director's denial decision, the single issue in this case is whether or not the marriage fraud bar under section 204(c) of the Act applies to this case. The approval of the instant petition was denied as a result of the beneficiary's other immigrant visa petition – a Petition for Alien Relative, Form I-130, which was filed on the beneficiary's behalf by [REDACTED] a naturalized United States citizen, on November 28, 2003. The record shows that [REDACTED] and the beneficiary were married on [REDACTED]. The Form I-130 petition was denied by the district director of the U.S. Citizenship and Immigration Services (USCIS) office in Santa Ana, California, on December 22, 2006, on the ground that the evidence of record failed to establish that the marriage was not entered into for the purpose of evading U.S. immigration laws. The petitioner filed an appeal with the Board of Immigration Appeals (BIA), which was dismissed by the BIA on February 12, 2008. In its dismissal order the BIA agreed with the district director's analysis and conclusion that the evidence of record was not sufficient to meet the petitioner's burden of proof that she and the beneficiary, who were separated by that time, were in a *bona fide* marriage.¹

¹ The record shows that an earlier Petition for Alien Relative, Form I-130, was filed on the beneficiary's behalf by [REDACTED] a native born U.S. citizen, on May 23, 2001. Concurrent with the filing of the Form I-130, the beneficiary also filed an application for lawful permanent residence (Form I-485) as the immediate relative of a U.S. citizen. These two forms were filed shortly after the beneficiary's marriage to [REDACTED]. The Form I-130 petition and the Form I-485 application were both denied on June 11, 2003, after the beneficiary failed to appear for an adjustment of status interview scheduled for May 22, 2003. A few months later, on September 8, 2003, the beneficiary and [REDACTED] were granted a judgment of divorce by a New York State court.

Section 204(c) of the Act provides as follows:

Notwithstanding the provisions of subsection (b)² 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.

In denying the Form I-130 petition on December 22, 2006, the district director discussed myriad informational and evidentiary discrepancies in the record that undermined the claims by [REDACTED] and the beneficiary that they had a *bona fide* marriage relationship from October 2003 onward. The AAO will not repeat the substance of that decision here, but incorporates it by reference into the instant decision.

Before issuing its decision on the Form I-140 petition, the Director issued a Notice of Intent to Deny (NOID) on July 8, 2008, to which the petitioner responded with a letter from counsel and additional documentation pertaining to the marital relationship between the beneficiary and [REDACTED]. Counsel cited previously submitted evidence – including tax and bank records, photographs of the beneficiary and [REDACTED], and declarations from friends – and reiterated the reasons alleged by the beneficiary and [REDACTED] for residing together only intermittently before they separated. Additional evidence was submitted in the form of credit card, tax, and insurance documents, as well as some more photographs of the beneficiary and [REDACTED].

In denying the Form I-140 petition on June 22, 2010, the Director referred to the district director's "thorough review of the record" in the Form I-130 proceeding and stated that "[t]he additional photographs and affidavits submitted [in response to the NOID of July 8, 2008] cannot overcome the evidence leading to the denial [of the Form I-130 petition] for marriage fraud" The Director cited "conflicting statements" which "do not lend credibility to the beneficiary's claims."

On appeal, the petitioner submits a statement from counsel and additional documentation, including a declaration from the beneficiary, correspondence relating to the beneficiary's employment in Illinois in the late 1990s, tax and financial documents from 2005 identifying the beneficiary's address as [REDACTED] some additional photographs of the beneficiary and [REDACTED], as well as medical records of the beneficiary. According to the beneficiary, in his declaration dated July 13, 2010, the reason he and his wife had separate residences during their

² 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.

marriage was due to their different religions – he is Muslim, she is Christian – and their fear that [REDACTED] family would not accept her marriage to a Muslim. The beneficiary indicated that he and his wife never broke the news of their marriage to her family, and acknowledged that they were now (July 2010) divorced. According to the beneficiary, in 1999 he quit his job with an Illinois company, which was sponsoring him for permanent residence, in order to go to California to be with [REDACTED] and after a four-year relationship they were married (in October 2003). The beneficiary states that "I moved to California to be with [REDACTED] and only to be with [REDACTED] . . . I threw [my employment in Illinois and permanent residence track] away to follow my heart and be with the one I wanted to be with forever . . ."

This recitation of motivation and events, however, does not square with the documentation of record. As previously noted, the beneficiary was married to someone else during the time period he claims to have been courting [REDACTED]. The record includes copies of a marriage certificate and a divorce judgment showing that the beneficiary was married to [REDACTED] in [REDACTED] and that the two were granted a divorce in [REDACTED] on [REDACTED]. On his Form I-485 application and accompanying Form G-325A (Biographic Information) filed on May 23, 2001, the beneficiary identified his residence since August 1999 as [REDACTED]. That is the same address that [REDACTED] identified as her residence on the Form I-130 petition she filed on behalf of the beneficiary on May 23, 2001, and on her own Form G-325A. Thus, the beneficiary was not "only" with [REDACTED] from 1999 onward. On a later Form G-325A, dated November 24, 2003, the beneficiary listed two addresses in [REDACTED], as "second addresses" from January 1999 to January 2001 and from January 2001 to October 2003, respectively.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The evidence discussed above refutes the beneficiary's claim to have pursued [REDACTED] single-mindedly during the years 1999 to 2003, and casts great doubt on his claim to have entered into a *bona fide* marriage relationship with her. During much of the time he claimed to be in a four-year relationship with [REDACTED] that culminated in marriage, the beneficiary was actually married to another woman. The beneficiary married [REDACTED] barely more than a month after divorcing [REDACTED] and was subsequently divorced from [REDACTED] as well. The AAO agrees with the Director's determination that the beneficiary has made "conflicting statements" which "do not lend credibility to [his] claims." Conflicting statements and lack of credibility characterize the beneficiary's entire record before the USCIS, and are not allayed by the latest set of photographs and selected documents submitted with the instant appeal. Based on its independent review of the record, the AAO concludes that there is ample evidence in the record that the beneficiary attempted to evade U.S. immigration laws by marrying [REDACTED]

Therefore, the AAO will affirm the Director's determination that the marriage fraud bar – specifically, section 204(c)(1) of the Act – precludes the approval of this petition.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The Director's decision of June 22, 2010 is affirmed. The appeal is dismissed.