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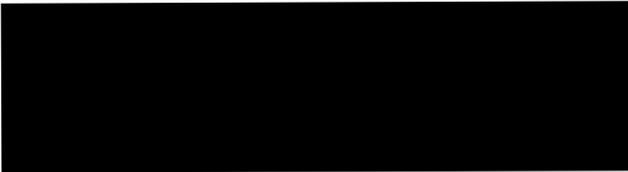


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 16 2006**
SRC 00 072 51676

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

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition approval was revoked by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director for entry of a new decision.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty cook - Italian food. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U. S. Department of Labor. On October 29, 2004, the director revoked the petition based upon the determination of the United States Citizenship and Immigration Services (CIS) that the beneficiary is ineligible for the classification sought based on the beneficiary's fraudulent marriage to a United States citizen and revoked the petition approval pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c).

On appeal, counsel submits a legal brief and additional evidence.

Counsel submitted a Form I-290B appeal in this matter. In the section reserved for the basis of the appeal, counsel states that:

Beneficiary ... maintains that he never got notice of the January 8, 1990, denial of Petition for Alien Relative. Beneficiary maintains that his marriage was not a sham or fraudulent marriage and that he lived with his US citizen petitioning spouse. The October 29, 2004 decision to revoke the instant I-140 immigrant visa fails to provide basic and sufficient information regarding the January 8, 1990 denial of Petition for Alien Relative, which serves as the sole basis to revoke the I-140 Immigrant visa.

As is evident from the above statement upon appeal, the petitioner and the beneficiary are denying the finding of the director that in a previous case¹ that the beneficiary entered into a fraudulent marriage to a United States citizen.

The Section 204(c) of the Act 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 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 8 C.F.R. § 204.2(a)(1)(ii) states in pertinent part:

Fraudulent marriage prohibition. Section 1040 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 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

¹ CIS identification number SRC 00 072 51676.

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.

According to the record of proceeding in this matter, on November 27, 1987, a Form I-130 petition was filed by a U.S. citizen spouse,² [REDACTED] for the subject beneficiary, and, thereafter, the beneficiary filed a Form I-485 Application to Register Permanent Residence or Adjust Status on February 26, 1988. [REDACTED] and the beneficiary appeared for an interview that in part, inquired into the *bona fides* of their marriage. Because of discrepancies in testimonies that arose in the interviews of the parties, the director denied the marriage based I-130 petition on January 8, 1990. According to the record of proceeding, copies of the denial of the petition were sent to the petitioner, [REDACTED], and her attorney Kenneth Panzer. No appeal was filed of the decision to deny the petition. Thereafter, on March 29, 1990, the director issued a denial of the Application to Register Permanent Residence or to Adjust Status, since the I-130 petition was denied, and, notices were sent to the beneficiary and his attorney Kenneth Panzer on the same date. No appeal was filed of the decision to deny the Application to Register Permanent Residence or to Adjust Status. On November 5, 1990, the beneficiary divorced the petitioner, [REDACTED].

On January 14, 1998, the petitioner [REDACTED] filed an employment based immigrant visa petition (I-140) for the beneficiary [REDACTED]. On March 7, 2000, the director approved the petition. On June 7, 2000, the beneficiary filed a Form I-485 for Application to Register Permanent Resident. Thereafter, a decision to revoke the approved employment based immigrant petition was issued October 29, 2004, based upon the finding that the beneficiary entered into a marriage for the purposes of evading the immigration laws. The petitioner appealed the revocation.

All the above-mentioned petitions proceeding information is contained within the record of proceeding in this matter, and, it was available to the director in making his present determination.

Counsel's statements on appeal, and in the brief that followed contend the following: the director's decision does not contain sufficient information concerning the denial of the petition for Alien Relative on the basis of fraud under INA 204(c); approximately 240 pages of information were released to the petitioner upon its Freedom of Information (FOIA) request, but some information was withheld; the records released do not show the denial of the marriage based petition; the records released do not show evidence of the denial for fraud; the beneficiary did not receive notice of the denial of the marriage based petition until October 29, 2004; that the "automatic revocation" of the approved Form I-140 petition pursuant to the regulation at 8 C.F.R. § 205.1(a), *et seq.* was not supported by regulations; and, that a notice of intent to revoke was required.

The regulations at 8 C.F.R. § 205.2 entitled "Revocation On Notice" states in pertinent part:

(a) General. Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) Notice of intent. Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-

² The date of [REDACTED]'s marriage to the beneficiary was November 18, 1987.

petition and in opposition to the grounds alleged for revocation of the approval. (Revised 3/26/96; 61 FR 13061)

(c) Notification of revocation. If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

(d) Appeals. The petitioner or self-petitioner may appeal the decision to revoke the approval within 15 days after the service of notice of the revocation. The appeal must be filed as provided in part 3 of this chapter, unless the Associate Commissioner for Examinations exercises appellate jurisdiction over the revocation under part 103 of this chapter. Appeals filed with the Associate Commissioner for Examinations must meet the requirements of part 103 of this chapter. (Added 3/26/96; 61 FR 13061).

No notice of intent to revoke the petition was issued by the director in this case according to the record of proceeding. Therefore, the petition will be remanded so the director can pursue revocation in accordance with the procedures according to the regulation at 8 C.F.R. § 205.2.

The AAO will remand the case to the director and the director can undertake any procedural mechanisms or request any additional information or evidence necessary to make an additional determination.

ORDER: The petition is remanded to the director for entry of a new decision.