

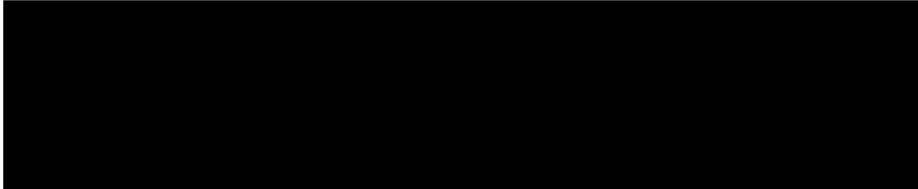
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
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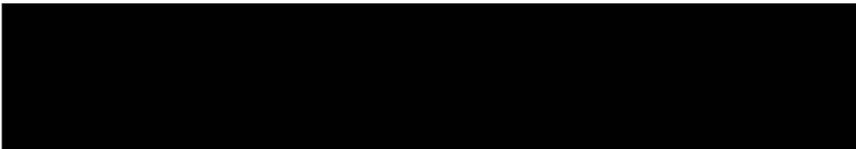
Date: **AUG 28 2007**

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:

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 Director, Vermont Service Center initially approved the instant Form I-140 visa petition. The Director, Philadelphia District, served the petitioner with notice of intent to revoke approval of the preference visa petition, and subsequently revoked that approval. The petitioner appealed to the Administrative Appeals Office (AAO), which remanded the matter. The Director, Philadelphia District, revoked approval again. The matter is again before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a foreign food specialty cook. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had previously entered into or attempted to enter into a sham marriage for the purpose of evading immigration laws and revoked approval of the petition pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c).

The record shows that the appeal was properly and timely filed and makes a specific allegation of error in law or fact. The procedural history of this case is documented in the record and incorporated into the decision. As set forth in the director's decision of denial the sole issue in this case is whether or not the petition must be denied based on section 204(c) of the Act.

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 AAO reviews *de novo* issues raised in decisions challenged on appeal. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all evidence properly in the record including evidence properly submitted on appeal.¹

In the instant case the record contains (1) an affidavit dated December 4, 1995 attested to by the beneficiary, (2) a court order dated November 2, 1995, and (3) an affidavit dated March 17, 1997. The record contains no other evidence pertinent to the issue of whether the beneficiary entered into a sham marriage.

The beneficiary's December 4, 1995 affidavit was prepared and signed at an interview related to his submission of a Form I-485 Application to Adjust Status. In it, the beneficiary described the circumstances of

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

his marriage, or attempted marriage, to [REDACTED] In the affidavit the beneficiary identified himself and described meeting [REDACTED] The beneficiary then stated,

I asked [REDACTED] to marry me about the first week of December 1994. I was only in her house one time. I met her father once[.] I don't remember his name. He knew we were getting married and asked us what we were doing. I told him we were just helping each other out.

After a break to put money in a parking meter the beneficiary corrected a detail of his first meeting with [REDACTED], specifically, the name of the club in which they first met, then continued,

I asked her to marry me so I could stay in this country. I told her I could help her by giving her a place to stay. At that time she was not working and she wanted to move out of her parents' house. She never moved in with me. We got married. The day after the marriage I went to work. My boss said it was wrong and he referred me to [the beneficiary's previous counsel.] He said I can give you permission to work. Go to the lawyer you don't need to get married, you don't need the trouble.

The only reason I married her was to stay in this country. I did not pay or promise to pay her any money. I did not give her or promise to give her anything of value in exchange for marrying me.

We never lived together anywhere and we never had any sexual relationships. [sic]

This was a short period in my life that lasted for about one month. It is now a new year and a new life.

We never had a honeymoon. I had promised to take her to Italy in Feb. or March before we were married. The day after the marriage I realized the marriage was a mistake. I never applied for any immigration benefit or work authorization on the basis of my marriage to [REDACTED] I never even picked up any immigration form to apply for any benefit on the basis of my marriage to [REDACTED]

The November 22, 1995 court order is an order of annulment granted to the beneficiary and [REDACTED] [REDACTED] It states that on December 16, 1994 the beneficiary and [REDACTED] entered into a "supposed or alleged marriage" but that they were then incapable of making such a contract because they had no intention of being married. The order states that the marriage is wholly and absolutely null and void, to all intents and purposes whatsoever.

In the March 17, 1997 affidavit the beneficiary stated,

I did not marry [REDACTED] to get an immigration benefit. I did not marry [REDACTED] to get anything from [I]mmigration. I decided that our marriage and our love for each other would not last the way a marriage should and I decided to have an annulment.

I never agreed with anybody or had any plan to get anything from Immigration. I never tried to get any benefits, never made any ideas to get any and never conspired for any immigration benefit.

Based on the evidence initially submitted, the Director, Vermont Service Center, approved the visa petition on August 15, 1995. Subsequently, after issuing a Notice of Intent to Revoke on January 23, 1997, the Director, Philadelphia District, revoked approval on October 21, 1997. On August 30, 1999 the AAO remanded the matter on procedural grounds and the Director, Philadelphia District, revoked approval again on August 6, 2001.

On appeal, counsel asserted that,

- (1) The [beneficiary] did not attempt or conspire to attempt to evade the immigration laws to allow him to stay in the United States.
- (2) The [beneficiary's] marriage was annulled, rendering it *void ab initio*.
- (3) The [beneficiary's] annulment of his marriage was a timely recantation of his own volition and without delay.
- (4) The [beneficiary] never sought or attempted to seek any immigration benefits as a result of his marriage.
- (5) There was no harm to the United States Government.
- (6) The [beneficiary] timely retracted his statement [in the sworn affidavit of] December 4, 1995 without delay and without being advised of the consequences of his behavior.

[and]

- (7) The evidence relied upon by the District Director does not rise to the level of substantial and probative evidence requisite to the preclusion of the approval of a visa petition according to Section 204(c)(2) [of the Act.]

The appeals brief provided expands upon those points.

The record also contains a letter dated March 21, 1997 from an attorney who previously represented the petitioner and the beneficiary. In that letter previous counsel avers (1) that the affidavit relied upon in revoking approval of the visa petition was obtained without proper warning and was not given under oath, (2)

that the beneficiary has an extremely limited knowledge of English and did not read, and was unable to read, the statement, (3) that the interviewer, not the beneficiary, wrote the statement, and (4) that the statement is inaccurate and does not reflect the content of the interview. Previous counsel also admitted that he was present at the interview when the signed statement was given and noted that the statement contains contradictions. Previous counsel's arguments were not asserted on appeal and are not preserved on appeal.

At his I-485 interview the beneficiary admitted that he married, or attempted to marry, with the intent of obtaining an immigration benefit. His affidavit is rich in detail that supports that he entered into that sham marriage for no other reason. He appears to have abandoned his plan to obtain an immigration benefit very soon, but only in response to his employer's offer to obtain him a similar benefit legally.

In any event, when the beneficiary abandoned his plan to obtain an immigration benefit through his marriage is irrelevant. That his intent does or does not constitute conspiracy is not controlling. Whether he took any additional steps toward obtaining the benefit is not controlling. The beneficiary admitted that he entered into or attempted to enter into a marriage for the purpose of evading the immigration laws. If the beneficiary's admission is taken as true, then, pursuant to section 204(c) of the Act, the instant petition may not be approved.

Counsel urges, however, that the beneficiary timely retracted his sworn statement, without being advised of the consequences or his admission.

Given the nature of the relationship between counsel and client, that counsel himself failed, after the fact, to advise the beneficiary of the consequences of entering into a sham marriage and admitting it before an officer of CIS is surprising. Further, counsel's basis for asserting that no one else explained the gravity of his actions to the beneficiary is unstated.

Even if this office assumes that counsel's assertion is correct, however, it would not sway this office. Even if no one advised the beneficiary of the consequences of his admission, as counsel asserts, the consequences may have dawned on the beneficiary independently.

The beneficiary signed a detailed statement admitting that he entered into a sham marriage specifically and solely to obtain an immigration benefit. This office remains convinced of the truth of the facts he admitted to in his affidavit notwithstanding his subsequent self-interested retraction.

The beneficiary entered into or attempted to enter into a marriage for the sole purpose of evading immigration laws. Pursuant to section 204(c) of the Act the petition may not be approved.

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 met that burden.

ORDER: The appeal is dismissed.