

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

**PUBLIC COPY**

B6



FILE: [REDACTED]  
EAC 03 241 55702

Office: VERMONT SERVICE CENTER

Date: NOV 20 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, revoked approval of the preference visa petition that is now before the Administrative Appeals Office (AAO) 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 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 found that the beneficiary had previously been determined to have sought to be accorded immediate relative status as the spouse of a U.S. citizen by reason of a marriage entered into for the purpose of evading immigration laws, and revoked approval of the visa 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. Further elaboration of the procedural history will be made only as necessary. As set forth in the director's decision of revocation the sole issue in this case is whether or not approval of the petition must remain revoked pursuant to Section 204(c) of the Act.

Section 204(b) states, in relevant part,

After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 203(b)(2) or 203(b)(3)<sup>1</sup>, the [Director] shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petitioner is made is . . . eligible for preference under subsection (a) or (b) of section 203, approve the petition . . . .

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 [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.

Section 212(a)(6)(c)(i) 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.

Section 205 of the Immigration and Nationality Act (the Act) provides, in pertinent part,

---

<sup>1</sup> Section 203(b) of the INA is the statute pursuant to which the instant Form I-140 visa petition was filed.

The [Director] may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under Section 204. Such revocation shall be effective as of the date of approval of any such petition.

The Form I-140 immigrant visa petition in this matter was submitted on August 18, 2003 and identifies the beneficiary as [REDACTED] born October 29, 1957. The answer to Question Six in Part Four states that no immigrant visa had ever previously been filed for the instant beneficiary.

In connection with filing a Form I-485 Application to Adjust Status, the beneficiary executed, on February 17, 2004, a G-325 Biographic Information form. On that form the beneficiary stated that he was then married to [REDACTED], and had never previously been married.

The Form I-140 visa petition was approved on January 14, 2004.

The record contains a Form I-130 Petition for Alien Relative filed on November 25, 1985 on behalf of the beneficiary, [REDACTED] born October 28, 1957. The basis of that application was the beneficiary's marriage to [REDACTED] formerly [REDACTED] formerly [REDACTED] on November 1, 1985.

On January 21, 1987, at the interview pertinent to the spousal petition, the beneficiary gave a sworn statement in Spanish. That statement is translated into English as follows,

My complete and correct name is [REDACTED] I have not used any other names. I am a citizen and native of Spain, born October 29, 1957 in Santa Isabel de Fernando Poo. My parents were born in Spain and are also citizens of Spain.

I last entered the United States on September 20, 1983 through New York Kennedy Airport as a tourist. I had a visa to enter the United States and the immigration official gave me until March 19, 1984 to stay in this country. I went to the immigration office in New York for an extension, but never received it.

My friend [REDACTED] told me that there is a person named [REDACTED] who can arrange marriages [to obtain U.S.] residence. I went to [REDACTED] office on Main Street in Passaic. During September 1985 he spoke to me about the marriage. Five days later I returned to [REDACTED] office to meet the woman, [REDACTED] She is a citizen of the United States through birth in Puerto Rico. I paid [REDACTED] \$1,000 for the marriage and paid [REDACTED] \$1,000 after the wedding ceremony. I married her on November 1, 1985. [REDACTED] was also a witness to the ceremony. I will pay [REDACTED] \$1,000 after today's interview. [REDACTED] prepared the residence papers and the notary was [REDACTED] I have never lived with [REDACTED] as husband and wife.

Also on January 21, 1987, the District Director, Newark, New Jersey, found the beneficiary's marriage to be fraudulent and denied the spousal petition.

On January 27, 1987 the immigration officer who conducted the interview prepared a G-166C Memorandum of Investigation pertinent to it. The officer stated that investigation revealed that the beneficiary's wife had come from Puerto Rico to attend the interview (The beneficiary lived in New Jersey.), and could not be questioned further because she left the Federal building when she suspected that the fraudulent nature of her marriage to the beneficiary would be discovered.

On April 27, 2006 the Director, Vermont Service Center sent the instant petitioner a notice of intent to revoke approval of the instant visa petition. That notice reviewed the evidence pertinent to the beneficiary's previous marriage and accorded the petitioner 30 days in which to respond.

In response counsel submitted a letter dated May 17, 2006. The body of counsel's letter states, in its entirety,

With reference to the I-130 visa petition filed by [redacted] I do not believe that a decision was rendered based on its merits. Thus if no decision on the merits of the petition concerning the validity of the marriage, was made by [Citizenship and Immigration Services (CIS)], accordingly, the provision of Section 204(c) of [the Act] should be imposed. Furthermore the beneficiary states that any statements taken from him on January 21, 1987, were made under duress based on threats of prosecution.

Consequently, the approved employed based visa petition filed by [the petitioner] on behalf of [the beneficiary] should not be revoked.

[Errors in the original.]

The director determined that the evidence submitted did not overcome the evidence that the beneficiary had entered into a sham marriage in order to obtain an immigration benefit, and, on July 19, 2006, revoked approval of the visa petition.

On appeal, counsel again asserted,

With reference to the I-130 visa petition filed by [redacted] on behalf of [redacted] I do not believe that a decision was rendered based on its merits. Thus if no decision on the merits of the petition concerning the validity of the marriage, was made by [CIS], accordingly, the provision of Section 204(c) of [the Act] should be imposed. Furthermore the beneficiary states that any statements taken from him on January 21, 1987, were made under duress based on threats of prosecution.

Consequently, the approved employed based visa petition filed by [the petitioner] on behalf of [the beneficiary] should not be revoked.

[Errors in the original.]

Neither counsel nor the beneficiary has submitted any additional information, argument, or documentation.

Counsel is incorrect that no decision was issued on the merits of the spousal petition. In the decision of January 21, 1987 the district director found that the beneficiary entered into a sham marriage in an attempt to obtain an immigration benefit and denied the spousal petition. That decision constitutes a finding that triggers the provisions of section 204(c) of the Act.

Although counsel stated that the beneficiary stated that he made his January 21, 1987 statement under duress, if at all, this office notes that counsel's assertion is not sworn testimony nor any other type of evidence. *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980); Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof. As the record contains no evidence that the beneficiary's statement was made under duress, not even a direct assertion of duress by the beneficiary, counsel is not arguing from the evidence, but merely making a conclusory statement. Merely going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190)).

Even had the beneficiary submitted an additional sworn statement, a mere repudiation of his sworn statement of January 21, 1987, without a thorough explanation of the underlying facts pointing to a sham marriage, including the apparent attempt to conceal the existence of a previous marriage and a spousal petition based on it, would be unlikely to convince this office that the officer who held the interview somehow misunderstood or misrepresented the facts before him.

Further still, section 204(c) of the Act indicates that a petition may not be approved if the beneficiary has been found to have entered into a sham marriage in an attempt to gain an immigration benefit. Revocation of the instant petition does not seem to be discretionary. Even if this office were inclined to overturn the finding, that power does not appear to rest with us.

The director's notice of intent to revoke and ultimate decision to revoke were based on substantial and probative evidence in the record of proceeding to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. See *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). The director had good and sufficient cause to revoke approval of the petition.

The beneficiary's was determined to have entered into his prior marriage for the purpose of obtaining an immigration benefit and 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.