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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **OCT 01 2007**  
EAC 04 224 50035

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*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a large truck fleet leasing firm. It seeks to employ the beneficiary permanently in the United States as a diesel truck mechanic. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that a previously filed family-based petition had been denied based on the failure of the beneficiary to establish that his marriage was not entered into solely for the purpose of evading the immigration laws. The director stated that he was denying the employment-based petition (I-140) pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c).

Section 204(c) of the Act, 8 U.S.C. § 1154(c) 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 at 8 C.F.R. § 204.2(a)(1)(ii) also 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 an 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.

The evidence contained in the record reflects that [REDACTED] a U.S. citizen, married the beneficiary, [REDACTED] a citizen of Ghana, on February 9, 1996, in [REDACTED]. At the time of the marriage, the record indicates that [REDACTED] had a four-year old child named [REDACTED] Mrs. [REDACTED] filed a Form I-130, Petition for Alien Relative, on behalf of [REDACTED] which was approved on July 17, 1996, resulting in conditional permanent resident status granted to the beneficiary. Both Mr. and Mrs. [REDACTED] were advised that a joint petition to remove the conditional basis of the status (Form I-751) must be filed between June 17, 1998 and September 17, 1998. The petition was filed on July 15, 1998 supported by various documents including: copies of Mr. and Mrs. [REDACTED] joint 1996 and 1997 individual income tax returns; a copy of an unsigned letter from a bank indicating that Mr. and Mrs. [REDACTED] opened a joint bank account on July 8, 1998; affidavits submitted by [REDACTED] and

██████████, executed in June and July 1998, respectively, each affirming that the affiant knew Mr. and Mrs. ██████████ as a married couple; and evidence that Mrs. ██████████ was added to the beneficiary's health insurance coverage as of June 1, 1998. The address given on both tax returns submitted was ██████████

On September 23, 1998, the beneficiary and Mrs. ██████████ were scheduled to appear for an interview relating to their petition to remove the conditional basis of the beneficiary's permanent resident status. The beneficiary appeared but Mrs. ██████████ did not. At that time, the beneficiary signed a sworn statement about his marriage to ██████████. He stated in pertinent part:

I married ██████████ on February 9, 1996. I never lived with ██████████ prior to the marriage. I met ██████████ a few months prior to the marriage. I worked at Dunkin Donuts on Madison Avenue and she used to come with her son. Eventually we became friends and got married. ██████████ and I have never lived together. We have never slept together or resided as man and wife. I don't know if she has any boyfriends. I don't know much about her private life.

The beneficiary also signed a written request for withdrawal of the Form I-751. Also in the record is an undated written request for withdrawal of the Form I-751 signed by ██████████. In addition, the record includes ██████████ properly executed affidavit, dated September, 28, 1999 in which she states that she and the beneficiary are married, and they continue to see each other as good friends, but that she is uncertain as to whether the marriage can reconcile and that they can begin to live as husband and wife. She states that the beneficiary is very involved in her son's life. In the record is also a statement from Mrs. ██████████ in the form of an affidavit but is undated and contains a notarization which is flawed in that the date when the notary's commission expires is missing. In this statement, Mrs. ██████████ states that they have lived together since their marriage in 1993, originally at the Livingston Arms Apartments in Albany and later on New Scotland Avenue in late 1997. She states that the beneficiary spent most of his time at this apartment but kept the other one at the ██████████s because he had relatives living there and some of his belongings there.

The record also contains two copies of Mrs. ██████████'s application for recertification for public assistance listing her name as ██████████ and signed on September 29, 1997 and October 1, 1998, respectively. On both applications, she states that her marital status is "single." On the 1997 application, her address is listed as ██████████ and on the 1998 application, the address is given as ██████████

The acting center director advised the petitioner, ██████████, of these facts in his February 2, 2005 notice of intent to deny the petition based on the provisions of section 204(c) of the Act, in that the evidence indicated that the beneficiary had entered into the marriage for the purpose of evading immigration laws.

The director additionally noted certain discrepancies between documentation appearing in the record including statements indicating that the beneficiary simultaneously had no children and had one son, ██████████ reference to a spouse named ██████████, as well as a spouse named ██████████ a lease dated July 18, 1996, to

rent an apartment at [REDACTED] Apartments on Livingston Ave. which lists only [REDACTED] and her son, not the beneficiary, as the persons to occupy the apartment.

The director concluded that it appeared as though the beneficiary had entered into a marriage in order to circumvent U.S. immigration laws and that pursuant to the provisions of section 204(c) of the Act and 8 C.F.R. § 204.2(a)(1)(ii), the I-140 could not be approved. The petitioner was afforded thirty (30) days to respond with argument or evidence in opposition to the director's proposed denial. The director advised that such evidence might include joint financial documentation, such as leases, mortgages, bank accounts or tax returns, as well as affidavits. If affidavits are provided, the director advised the petitioner that they must contain the affiant's full name, address, date and place of birth as well as the detailed basis of the knowledge for the described event or information.

In response, the petitioner submitted an affidavit from [REDACTED] dated March 1, 2005 in which he stated that he has known the beneficiary for ten years and has played soccer with him. [REDACTED] also stated that he had visited the apartment on Livingston Avenue in Albany when [REDACTED] was there and states that it appeared that she was living there and that they were living as husband and wife. He indicated that he believed that the beneficiary genuinely loved [REDACTED] and did not marry her to obtain an immigration benefit. Also submitted was an affidavit from [REDACTED] met the beneficiary in Ghana and has known him for fifteen years according to his affidavit. His affidavit also indicates that the beneficiary and [REDACTED] had a bona fide marriage. The affidavit is flawed in that it is neither notarized nor dated. The beneficiary's affidavit, dated March 1, 2005, recants his sworn statement given to the Service in September 1998 that he and [REDACTED] had never lived together. He states that "I only made the statements because I was intimidated, and that appeared to be what the officer wanted me to say. [REDACTED] and I did have sexual relations, although a short time into our marriage, [REDACTED] no longer wanted to have sex with me. I agreed to withdraw my I-751 because I was no longer living with [REDACTED] and I was told that I could not proceed with that I-751 since it was filed as a joint petition and we were no longer living together as husband and wife." The beneficiary claimed that he married [REDACTED] based on love, after dating her for approximately three months, and that he did not want the marriage to fail.

As to the address discrepancies noted by the director, the beneficiary states that after initially living with [REDACTED] at the Livingston Arms following the marriage, sometime in 1997 they both signed a lease on an apartment on New Scotland Avenue. He stated that he continued to keep the lease on the Livingston Arms apartment because some of his belongings were still there and he stayed there when it was more convenient for his employment. He stated that they had joint bank accounts and that [REDACTED] spent all the money, which was a source of dissension. He stated that he believed [REDACTED] was having affairs with other men and stated that she stopped wanting to sleep with the beneficiary. The beneficiary indicated that he was unable to obtain any records of their joint bank accounts from the time they married through 1998 because his bank had merged and no records from the earlier period were available.

The beneficiary additionally states that he was confused about filling out some of the forms as to whether he was to list [REDACTED] as his son, and not [REDACTED] son. He further stated that in the Form I-485 a typographical error was made and his spouse was listed as [REDACTED]. He explained that neither he nor his attorney had noticed that error. The beneficiary indicated that he and [REDACTED] have not yet sought a divorce.

The director denied the petition on September 14, 2005, noting that the petitioner's additional evidence had been reviewed, but that evidence did not amount to independent, competent, reliable evidence that might overcome the inconsistencies in the record regarding whether the beneficiary's marriage to [REDACTED] had ever been bona fide.

On appeal, the petitioner, through counsel, submits a statement that the director's decision was against the weight of the evidence and that the beneficiary did not enter the marriage to gain immigration benefits. Counsel submits his own affidavit as evidence. His own affidavit is a summary of his assertions why the sanctions of section 204(c) should not be applied to the adjudication of the I-140 petition. This office notes that the unsupported assertions of counsel are not evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also asserts that the discrepancies appearing on the forms regarding whether or not the beneficiary has a child are due to the beneficiary's confusion about when and how to list his wife's child. Counsel maintains that during his questioning at the interview with the immigration officer in September 1998, the beneficiary was not in a clear state of mind and that he was intimidated into making the statements that he did, and which were inconsistent with earlier submitted documentation.

In *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) the Board states:

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. See *Id.*

The petitioner never provided competent, objective evidence to reconcile discrepancies in the record. The petitioner for example, never provided independent, reliable evidence to reconcile the beneficiary's September 1998 sworn statement indicating that he and [REDACTED] had never lived together, slept together or resided together as man and wife with other evidence in the record that they had resided together as husband and wife from late 1993 through late 1997 and beyond. See undated affidavit of [REDACTED] submitted into the record in 1998.

The petitioner also never provided independent, competent evidence to reconcile the following contradictory evidence in the record: (1) a New York State Marriage Registration certificate which states that on February 2, 1996, the beneficiary married a [REDACTED] who then resided at [REDACTED] the statements that [REDACTED] made on her applications for public assistance in 1997 and 1998 that her marital status was "single" and that she resided at [REDACTED] in 1997 and at [REDACTED] in 1998; and (3) the affidavit submitted into the record in 1998 in which [REDACTED] attested to having been married to the beneficiary and having lived with him from 1993 at [REDACTED] through 1997 when the two moved to [REDACTED]

[REDACTED]

Page 6

In the instant case, there is sufficient evidence in the record to deny the I-140 petition pursuant to section 204(c) of the Act based on the determination that the beneficiary entered into the 1996 marriage with [REDACTED] for the purpose of evading the immigration laws. *See also* 8 C.F.R. § 204.2(a)(1)(ii). Therefore, the employment-based 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.