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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: AUG 11 2009
SRC 07 265 53337

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:
[Redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the preference visa petition. Subsequently, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition. In his Notice of Revocation (NOR), the director ultimately revoked the approval of the Form I-140 petition. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed.

The petitioner is a trucking company. It seeks to employ the beneficiary permanently in the United States as a carpenter under Section 203(b)(3) of the Act, 8 U.S.C. § 1153(b)(3). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). On March 20, 2009, the director revoked the petition's approval based upon the determination 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's approval pursuant to Section 204(c) of the Act, 8 U.S.C. § 1154(c).

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.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General 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."

Regarding the revocation on notice of an immigrant petition under Section 205 of the Act, the BIA has stated:

¹ The Form I-140 petition was filed on July 3, 2007; the director approved the petition on April 14, 2008; a NOIR was issued by the director to the petitioner on February 6, 2009; the petitioner responded to the NOIR on March 11, 2009; the director issued a NOR to the petitioner on March 20, 2009; and the petitioner appealed the revocation of the petition's approval on April 3, 2009. The record of proceeding is consolidated, *inter alia*, with two separate prior proceedings based upon marriage based petitions filed for the beneficiary by his spouse, [REDACTED]. On March 6, 2000, the U.S. Citizenship and Immigration Services (USCIS) Newark District Office issued a denial of the Form I-130 petition charging the applicant with section 204(c) of the Immigration and Nationality Act (the Act) based on numerous discrepancies. The beneficiary appealed this decision to the Board of Immigration Appeals (BIA). The BIA upheld the Newark District Office's decision on July 24, 2002. On March 13, 2001, a divorce decree was issued dissolving the marriage between [REDACTED] and the beneficiary.

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval.

As set forth in the director’s NOR, the single issue in this case is whether or not the marriage bar under Section 204(c) of the Act applies to this case. The approval of this petition was revoked as a result of the beneficiary’s other immigrant visa petition. A Form I-130 petition was filed on the beneficiary’s behalf on August 2, 1997. Concurrent with the filing of Form I-130 petition, the beneficiary also sought lawful permanent residence and employment authorization as the immediate relative of a United States citizen. The file contains the completed forms, signed by the beneficiary, photographs, and a copy of a marriage certificate between the beneficiary and [REDACTED]

In connection with the Form I-130 petition, a decision was issued by the district director of the Newark USCIS District Office on March 6, 2000. The decision denied the Form I-130 petition because [REDACTED] had provided little information indicating that she and her husband had been living at the same address and because there were numerous discrepancies between her and her husband’s testimony during their USCIS Stokes interview on January 27, 1999.²

The record of proceeding contains the following relevant evidence: affidavits from the beneficiary and his friends and family attesting to the validity of his marriage with [REDACTED] the beneficiary and his wife’s marriage certificate from 1997; the beneficiary and his wife’s United States Internal Revenue Service (IRS) Joint Individual Income Tax Forms 1040 for 1998 and 1999; printed checks with both the beneficiary and his wife’s names on them, but only signed by the beneficiary, reflecting payments sent to the IRS in 1999; bank statements from a joint checking account from 1999; various bills, such as energy and cable bills, from 1997 and 1998 listing both the beneficiary and his wife’s names; a copy of [REDACTED] driver’s license with the same address as that of the beneficiary; two copies of photos of the beneficiary and [REDACTED] which counsel states were taken during their wedding reception and in their home respectively; a document from a Superior Court in New Jersey evidencing the dissolution of the marriage between the beneficiary and [REDACTED] on March 13, 2001; a BIA order dated

² The AAO notes that spouses are separated during a Stokes interview. A USCIS officer will question each individual in order to elicit information about the other. The questions posed regard their relationship, home life, and daily interactions.

July 24, 2002 stating that it would uphold the Newark District Office's decision to deny the Form I-130 petition; a USCIS letter to the beneficiary dated August 23, 2001 stating that his application for status as a permanent resident had been denied and that he should prepare to depart the United States on his own volition; and a USCIS letter to [REDACTED] dated March 6, 2000 stating that her Form I-130 petition for her husband had been denied.

On March 20, 2009, the director revoked the Form I-140 petition's approval pursuant to Section 204(c) of the Act, 8 U.S.C. § 1154(c). Specifically, the director found that the evidence submitted by the petitioner, which included documentation showing commingling of financial resources and affidavits of third parties having knowledge of the bona fides of the marriage relationship, was insufficient to overcome evidence in the record of proceeding that supported a reasonable inference that the petitioner's prior marriage with [REDACTED] was entered into for the purpose of evading immigration laws.

Section 204(c) provides for the following:

Notwithstanding the provisions of subsection (b)³ 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.

The regulation 8 C.F.R. § 204.2(a)(1)(ii) states in pertinent part:

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 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.

Section 212(a)(6)(c)(i) the Act states:

³ 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.

[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.

On appeal, counsel urges USCIS to consider additional affidavits from the beneficiary's friends and family members attesting that he and [REDACTED] lived together at [REDACTED] Newark, NJ 07104 and maintained a real and bona fide marriage. The AAO notes that these affidavits submitted are nearly identical to one another in their content, paragraph structure, and information relayed.

The AAO also notes that all of the evidence submitted regarding the beneficiary and his wife's commingling of finances appears to be general in nature. For example, there is no evidence that the beneficiary bought his wife a particular item or that she made a particular deposit to or withdrawal from their joint checking account. Though [REDACTED] mailing address appears to be the same as that of the petitioner, there is no concrete evidence showing that she actually lived there. For example, during the Stokes interview, she could not draw a basic picture of her bedroom with the beneficiary that corresponded with the beneficiary's drawing.

Counsel previously submitted a memorandum in response to the NOIR issued by the director to the petitioner on February 6, 2009. Within the memorandum, counsel asserts that the beneficiary and [REDACTED] entered into a valid marriage and that USCIS did not have evidence that the couple conspired to enter into the marriage in order to evade immigration laws. Counsel cites *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990), for the proposition that the director should examine the record as a whole and reach an independent conclusion. The director issued a NOR to the petitioner on March 20, 2009 stating that he had reviewed all of the evidence and that the petitioner had failed to overcome numerous discrepancies contained within the record of proceeding. Moreover, counsel's memorandum failed to address directly any of the discrepancies within the record of proceeding that USCIS had specifically documented.

The AAO notes that the USCIS Officer who conducted the beneficiary and his wife's Stokes interview on January 27, 1999 documented numerous discrepancies and inconsistencies between their testimonies, which were given under oath. From how the couple had gotten together to information regarding their respective families to basic information regarding their household schedule and activities, the beneficiary and his wife consistently provided contradictory information to the officer.⁴ *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) 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

⁴ For example, [REDACTED] stated that while she was living alone at [REDACTED], she was not sure how many times [REDACTED] had visited her. He stated that he visited her there one time. [REDACTED] also stated that she had two brothers and was the oldest child. [REDACTED] stated that she was the middle child. [REDACTED] and [REDACTED] then drew two completely different versions of how the furniture in their joint bedroom is configured.

remaining evidence offered in support of the visa petition.” *Matter of Ho* also states: “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.” *Id.* at 591-592. Neither the beneficiary nor counsel has provided an explanation for those discrepancies and inconsistencies.

There is substantial and probative evidence in the record of proceeding to support a reasonable inference that there was an attempt to enter into a sham or fraudulent marriage. We find that [REDACTED] and the alien beneficiary, by fraud or by willfully misrepresenting a material fact, are in violation of Section 212(a)(6)(c)(i) of the Act first mentioned above.

We find that there is substantial and probative evidence of an attempt or conspiracy by the alien and other individuals who have attempted or conspired to enter into a marriage in violation of the regulation 8 C.F.R. § 204.2(a)(1)(ii) for the purpose of evading the immigration laws. The beneficiary by submitting fraudulent documents or by conspiring with others to submit fraudulent documents that on their face presented evidence of a valid marriage where none existed as a basis of that petition, committed fraud.

The standard for revocation is found in statutory authority at Section 205 of the Act as stated above, and it is that standard that is applicable in this case. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Therefore, an independent review of the documentation reflects ample evidence that the beneficiary attempted to evade the immigration laws by marrying [REDACTED], and that attempt is documented in the alien’s file. Thus, the director’s determination that the beneficiary sought to be accorded an immediate relative or preference status as the spouse of a citizen of the United States by reason of a marriage determined by USCIS to have been entered into for the purpose of evading the immigration laws is affirmed.

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.