



U.S. Citizenship
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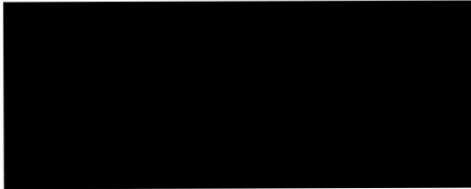
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IN RE:

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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, Vermont Service Center. In connection with the beneficiary's Form I-130, Petition for Alien Relative, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a wholesale florist. It seeks to employ the beneficiary permanently in the United States as a floral bouquet maker. 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 her marriage was not entered into solely for the purpose of evading the immigration laws. The director stated that he was revoking the approval of 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).

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, 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 instant Form I-140 petition was filed on October 10, 2003. It was approved on July 2, 2004. The Director issued a notice of its intent to revoke the approval of the petition on July 3, 2006. Counsel submitted a response to the notice of the intent to revoke on September 1, 2006. The

response included an affidavit by the beneficiary, a copy of a lease signed by the beneficiary and [REDACTED]; a copy of a cable bill in the name of [REDACTED]; and transcripts from the Internal Revenue Service for the years 1997 through 1999. The Director issued a decision revoking the petition's approval on January 22, 2007. On February 8, 2007, the petitioner appealed the revocation.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹ On appeal, counsel has submitted a brief, utility records in the name of [REDACTED], an affidavit from [REDACTED] regarding his relationship with the beneficiary, written statements from witnesses regarding the beneficiary's relationship with [REDACTED], pay stubs from [REDACTED] for [REDACTED], and a letter from the general manager of [REDACTED] stating that the beneficiary was employed by [REDACTED] under the name [REDACTED] from January 1990 until November 1990.

The standard for reviewing section 204(c) appeals is laid out in *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). In *Tawfik*, the Board held that visa revocation pursuant to section 204(c) may only be sustained if there is 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 also Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972).

Tawfik at 167 states the following, 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. Accordingly, the district director must deny any subsequent visa petition for immigrant classification filed on behalf of such alien, regardless of whether the alien received a benefit through the attempt or conspiracy. As a basis for the denial it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy. However, the evidence of such attempt or conspiracy must be documented in the alien's file and must be substantial and probative.

(citing *Matter of Kahy*, Interim Decision 3086 (BIA 1988); *Matter of Agdinaoay*, 16 I&N Dec. 545 (BIA 1978); *Matter of La Grotta*, 14 I&N Dec. 110 (BIA 1972); and 8 C.F.R. § 204.1(a)(2)(iv) (1989)). *Tawfik* states that the revocation decision may be made at any time and is properly determined by the district director in the course of his adjudication of the subsequent visa petition.

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

Id. at 168 (citing *Matter of Samsen*, 15 I&N Dec. 28 (BIA 1974)). *Tawfik* also states that “in order to find that an alien has attempted to enter into a marriage for the purpose of evading the immigration laws, the evidence of such an attempt must be documented in the alien’s file.”

A Petition for Alien Relative, Form I-130, was filed on June 13, 1997 by [REDACTED] on behalf of [REDACTED] (now [REDACTED]). The petition was withdrawn on October 24, 2000. The record includes an affidavit signed by the beneficiary on October 24, 2000 in which she stated “[t]he marriage between myself and [REDACTED] [was] for the sole purpose of receiving a residence card in the U.S.” The beneficiary further stated that she had an arrangement with [REDACTED] whereby “I would date him and he would marry me in order to help with my immigration papers. He has never lived with me and my family nor was I interested in him, but I maintained this dating relationship with him for the sole purpose of a residence card for me and my children.”

The record also contains a similar sworn statement by [REDACTED], also dated October 24, 2000. [REDACTED] stated “I married [REDACTED] for the sole purpose of her receiving a resident card for the U.S. and I have never lived with her nor do I intend on living with her as husband and wife. The marriage was never consummated for the purpose of maintaining a valid marriage.”²

In addition to these sworn statements, there are inconsistencies in the record regarding the beneficiary’s place of residence. Specifically, as noted by the director, in response to the NOIR, the petitioner submitted a copy of a lease signed by the beneficiary and [REDACTED] for the period December 1, 1999 through November 30, 2000. The lease was for an apartment located at [REDACTED]. The petitioner also submitted copies of three customer receipts for [REDACTED] payments made to [REDACTED], who is listed as the landlord on the lease for the apartment at [REDACTED]. Two of the receipts are from the beneficiary, and one is from [REDACTED]. The address listed on each receipt is [REDACTED]. The petitioner also submitted a copy of a letter from [REDACTED] dated February 8, 2000. The letter appears to be addressed to [REDACTED] and [REDACTED]. Mr. [REDACTED] name does not appear on the letter. Finally, in response to the NOIR, the petitioner submitted a written statement from the beneficiary in which she stated that she resided at [REDACTED] from approximately 1998 until 2000.

As noted by the director, the lease submitted in response to the NOIR conflicts with information provided by the beneficiary on the Form G-325A, Biographic Information, which was submitted with a Form I-485, Application to Adjust Status, filed on October 10, 2003. The Form G-325A also conflicts with the information provided in the beneficiary’s written statement submitted in response to the NOIR. Specifically, the beneficiary listed her address on the Form G-325A as [REDACTED] for the period October 1997 to December 2001. She did not indicate on the Form G-325A that she had ever lived at [REDACTED]. The petitioner has failed to explain this discrepancy in the beneficiary’s address. The decision in *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: “It is incumbent on the petitioner to resolve any inconsistencies in the record

² Although both the beneficiary and [REDACTED] submitted statements either on appeal or in response to the NOIR that they did not understand the contents of the earlier sworn statements because they were not provided a translator, the record is devoid of evidence indicating that, at the time they were presented with the statements by the officer, either party expressed confusion regarding the contents or language. Accordingly, the attempt to refute the contents of the signed statements at this stage is not credible and the parties are charged with knowledge of the terms of the statements.

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.”

On appeal the petitioner has submitted copies of a pay stub issued to [REDACTED] for the period September 17, 2001 to September 23, 2001. The address listed for [REDACTED] is [REDACTED]. Although the address is consistent with the information provided by the beneficiary on her Form G-325A, it is not consistent with the information provided by the beneficiary in the affidavit submitted in response to the NOIR.

On appeal, the petitioner has also submitted an undated letter from [REDACTED], the petitioner’s General Manager. The letter states that the beneficiary worked for the petitioner under the name [REDACTED] from February 1988 until December 1989 and under the name [REDACTED] from January 1990 until November 1990. This letter is insufficient to establish that the beneficiary, [REDACTED] and [REDACTED] are one and the same person. Further, the letter fails to explain why the pay stub is dated September 2001 when the beneficiary allegedly worked for the petitioner under the assumed name [REDACTED] in 1990.³

There are also discrepancies regarding [REDACTED] address. Counsel has submitted an affidavit from [REDACTED] in support of the instant appeal. In the affidavit, [REDACTED] lists his previous places of residence as follows:

Immediately after [his marriage to the beneficiary on April 15, 1997] we lived together at [REDACTED] New Brunswick, New Jersey We were at [REDACTED] for about one year and moved together to [REDACTED] New Brunswick for a year. After that we moved to [REDACTED] where we stayed for about two years.

Thus, according to [REDACTED] he and the beneficiary resided at [REDACTED], New Brunswick, NJ from approximately April 1997 to April 1998; at [REDACTED], New Brunswick, NJ from approximately April 1998 to April 1999; and at [REDACTED], New Brunswick, NJ from approximately April 1999 until April 2001. Counsel also submitted an account statement from Public Service Electric and Gas Company bearing [REDACTED] name and the address [REDACTED], New Brunswick, NJ. The record also contains a monthly statement for January 2000 from PSE&G in [REDACTED] name.

However, there is evidence in the record indicating that [REDACTED] was not living at [REDACTED] during this period. In the sworn statement made by [REDACTED] on October 24, 2000 he stated that he

³ There are two additional letters in the record from the petitioner, [REDACTED]. One is from [REDACTED] General Manager, and is dated March 18, 2004. This letter again states that the beneficiary was employed by [REDACTED] under the name [REDACTED] from February 1988 until December 1989 and under the name [REDACTED] from January 1990 until November 1990. There is also a letter dated September 6, 2003 from [REDACTED], Operations Manager of [REDACTED]. This letter states that the beneficiary was employed by [REDACTED] between 1998 and 2001. No reference is made to any previous work done under the name [REDACTED] or [REDACTED]. These are material inconsistencies which seriously detract from the credibility of these letters. The petitioner has failed to provide an explanation for the inconsistencies in these letters.

was residing at [REDACTED] Sommerset, NJ. Further, the record also contains a copy of a boating license issued to [REDACTED] on June 29, 2000 wherein [REDACTED] address is listed as [REDACTED], Sommerset, NJ 08873. In addition, the record contains payroll records for [REDACTED] from January and February 2000 which list [REDACTED] address as [REDACTED], New Brunswick, NJ. The petitioner has failed to explain these discrepancies in [REDACTED] address. As noted above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-592.

In support of this appeal, the petitioner has also submitted written statements from several witnesses. These witnesses claim to have personal knowledge of the marriage between the beneficiary and Mr. [REDACTED]. However, these statements are inconsistent with statements provided by the beneficiary and by [REDACTED]. For example, there are letters from [REDACTED] and [REDACTED], both dated August 3, 2006 in which the authors claim to have known the beneficiary for "more than ten years" and further claim that, when they first met the beneficiary, she was married to and residing with Mr. [REDACTED] at [REDACTED] New Brunswick, NJ. There is also a letter from [REDACTED] dated August 3, 2006, in which [REDACTED] states that he has known the beneficiary for 12 years and that, when he first met the beneficiary, she and [REDACTED] were residing at [REDACTED]. However, the record shows that the beneficiary and [REDACTED] were not married until April 15, 1997. Thus, these witnesses claim to have knowledge of the beneficiary's marriage to [REDACTED] before that marriage took place. In addition, [REDACTED] claims in the affidavit submitted with this appeal that he began living at [REDACTED] immediately after the marriage. These letters indicate that Mr. [REDACTED] was residing at [REDACTED] with the beneficiary prior to the marriage. Given these material inconsistencies, the AAO finds that these letters lack credibility. Therefore, they will not be given weight as evidence of a bona fide marriage between the beneficiary and [REDACTED].

In summary, the record of proceeding contains evidence that a family-based immigrant petition was filed to obtain an immigration benefit for the beneficiary. An independent review of the documentation in the record of proceeding presents substantial and probative evidence to support a reasonable inference that the prior marriage was entered into for the purpose of evading immigration laws. 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.

ORDER: The appeal is dismissed. The approval of the employment-based immigrant visa petition is revoked.