



U.S. Citizenship
and Immigration
Services

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DEC 30 2010

FILE:

Office: VERMONT SERVICE CENTER

Date:

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)

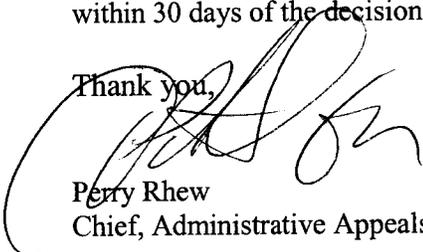
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching your decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. 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 an Italian restaurant. It seeks to employ the beneficiary permanently in the United States as an Italian specialty cook. The petition was filed for classification of the beneficiary under section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).¹ As required by statute, the petition was accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor (DOL).

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.²

The petitioner's Form ETA 750 was filed with DOL on April 12, 1999 and certified by DOL on July 9, 1999.³ The petitioner subsequently filed Form I-140 with U.S. Citizenship and Immigration Services (USCIS) on May 16, 2002, which was approved on August 26, 2004. The approval of this petition was revoked on May 14, 2009, as a result of the beneficiary's other immigrant visa petition. A Form I-130, Petition for Alien Relative (Form I-130), signed by the petitioner, [REDACTED],⁴ on December 19, 1997, was filed on January 27, 1998, on behalf of the beneficiary.⁵

¹ 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.

² The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

³ It is noted that the case involves the substitution of a beneficiary on the labor certification. Substitution of beneficiaries was permitted by DOL at the time of filing this petition. DOL amended the administrative regulations at 20 C.F.R. part 656 through a final rulemaking published on May 17, 2007, which took effect on July 16, 2007 (71 FR 27904). The regulation at 20 C.F.R. § 656.11 prohibits the alteration of any formation contained in the labor certification after the labor certification is filed with DOL, to include the substitution of alien beneficiaries on permanent labor certification applications and resulting certifications. For individual labor certifications filed with [DOL] prior to March 28, 2005, a new Form ETA 750 (sic), Part B signed by the substituted alien must be included with the preference petition. For individual labor certifications filed with the DOL on or after March 28, 2005, a new ETA Form 9089 signed by the substituted alien must be included with the petition. USCIS continued to accept Form I-140 petitions that requested labor certification substitution, which were filed prior to July 16, 2007.

⁴ The petitioner signed "[REDACTED]" as her married name.

⁵ The affidavits supporting the *bona fides* of the marriage were from five family members of the

Section 204 of the Act governs the procedures for granting immigrant status. Section 204(c) provides for the following:

Notwithstanding the provisions of subsection (b)⁶ 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.

On March 6, 2009, the director sent a NOIR to the petitioner, which may be summarized as follows:

- 1) That on January 27, 1998, the petitioner, a U.S. citizen named [REDACTED] (DOB August 26, 1978), had filed a Petition for Alien Relative, Form I-130, for the beneficiary (DOB February 15, 1969), a native of Pakistan. On this petition, signed by [REDACTED] on December 19, 1997, she states that her marriage to the beneficiary took place on December 16, 1997 in New York. A copy of a marriage certificate, dated December 16, 1997, from New Rochelle, New York accompanied the Form I-130. On the Form I-130, the petitioner also denied any prior marriages and stated that [REDACTED] was the last location where she and her husband both lived together.
- 2) That on October 16, 2001, the district director conducted an interview with the petitioner and beneficiary in accordance with the final consent order entered in *Stokes v. INS*, No. 74 Cir. 1022 (S.D.N.Y. Nov. 10, 1976). That the petition was denied based on the discrepancies in the parties' testimonies as to such items as

beneficiary, who bear the surname "[REDACTED]". It is noted that the ETA 750 and the Form I-140 were signed by the petitioner's president, [REDACTED]. It is unclear if the current beneficiary also has a familial relationship with [REDACTED] who was the president of the petitioning company. Although [REDACTED] may be a common surname, it is noted that a *bona fide* job offer may not exist if a beneficiary has a pre-existing familial relationship, ownership interest or personal relationship, which may have unduly influenced the labor certification. Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. See *Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." See *Matter of Summart 374*, 00-INA-93 (BALCA May 15, 2000).

⁶ 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.

the date that they moved in together; future plans as a couple to visit Pakistan; amenities of their apartment including whether they had a gas or electric stove and the color of the microwave, as well as the description of [REDACTED] trip to Atlanta in June 2001. The district director had denied the petition because the discrepant testimonies of [REDACTED] and the beneficiary had failed to overcome certain documentary evidence submitted in support of the I-130 petition, including a 2001 bank statement, a life insurance policy initiated in May 1999, and affidavits from beneficiary's landlord, who the petitioner testified was the beneficiary's cousin. The district director determined that the petitioner failed to establish that the marriage was *bona fide* and had not been entered into for the sole purpose of evading immigration laws.⁷ [REDACTED] appealed and on December 4, 2003, the Board of Immigration Appeals affirmed, without opinion, the results of the district director's decision.

- 3) In the NOIR, the Nebraska Service Center Director additionally advised the petitioner that United States Citizenship and Immigration Services (USCIS) records indicated that on April 17, 1997, [REDACTED] had filed a Petition for Alien Relative, Form I-130 on behalf of [REDACTED], a native of Pakistan. That petition was supported by a New York City marriage certificate showing that [REDACTED] were married February 21, 1997. The Form I-130 on behalf of [REDACTED] was denied on June 10, 1998 for failure to respond to a request for evidence. As noted above, [REDACTED] failed to mention this marriage on the Form I-130 filed for the beneficiary and denied any prior marriage in the [REDACTED] interview, (p. 5, October 16, 2001, transcript).
- 4) The director advised the petitioner to submit additional documentation of the *bona fides* of [REDACTED] marriage to the beneficiary, including an explanation of [REDACTED] failure to acknowledge her prior marriage to [REDACTED], as well as proof of the legal termination of the marriage to [REDACTED] prior to the December 16, 1997 marriage to the beneficiary.
- 5) The director additionally instructed the petitioner to submit additional evidence of the petitioner's continuing financial ability to pay the proffered wage of \$23,857.60 per year as set forth on the Form ETA 750, and as required by 8 C.F.R. § 204.5(g)(2),⁸ including documentation to show that the petitioner could

⁷ See *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975).

⁸ The regulation at 8 C.F.R. § 204.5(g) (2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the

cover the proffered salaries of over 22 other employment-based petitions that the petitioner, Pines of Florence had filed between October 2, 1998 and April 29, 2003. The director advised that Fulo Restaurant, which shares the same IRS federal employer identification number (FEIN) as the petitioner, had also filed additional petitions⁹ and requested that the petitioner provide a list of the alien workers that it had sponsored including respective proffered wages and current employee status.¹⁰

At the outset, it is noted that although the petitioner provided its requested corporate federal income tax returns and documentation related to the beneficiary's wages or compensation paid from April 2003 until 2008, along with copies of the 2008 W-2s for four other workers, the petitioner did not account for the other 22 employment-based petitions that have been filed by either Pines of Florence or Fulo Restaurant covering the same period as the instant beneficiary's priority date of April 12, 1999. Counsel's assertion that only five petitions have been filed by "Fu Lo Restaurants Inc. T/A Pines of Florence," and that the employer has six Pines of Florence restaurants under different corporations and different FEINs is not documented in the response and does not directly respond to the director's inquiry. Petitions have been filed for other beneficiaries by either "Pines of Florence," as in this case, or by Fulo Restaurant, which used the same FEIN. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Where multiple beneficiaries are sponsored by one petitioner, the petitioner must establish its collective ability to pay all offered wages of sponsored beneficiaries as of each respective priority date and continuing until permanent residence is obtained. Without an accounting from the petitioner of all sponsored beneficiaries, along with date of hire, proffered wage, wages paid, and date of termination, despite the petitioner's demonstrated net

form of copies of annual reports, federal tax returns, or audited financial statements.

⁹ USCIS electronic records show that Fulo Restaurant had filed 8 Form I-140s between 1997 and 2002. The petitioner responded with copies of five 2008 Form W-2s (including the beneficiary's) and a copy of the petitioner's Form W-3, Transmittal of Wage and Tax Statements for 2008 showing five total workers.

¹⁰ We find that the NOIR should have included a request for an employment verification letter that would clearly confirm that the beneficiary had acquired two full-time years of employment experience as an Italian specialty cook. The letter contained in the record from [REDACTED] of the Tamimi Global Company attesting to the beneficiary's experience in "both Asian as well as western dishes," does not sufficiently verify that the beneficiary acquired two years in the job offered of Italian specialty cook, as of the priority date, in preparing Italian specialty dishes as required by the terms of the ETA 750. The petition was not approvable on this basis as well. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145, noting the AAO conducts appellate review on a *de novo* basis.

current assets as shown on its federal tax returns, its ability to pay the instant beneficiary's full proffered wage cannot be properly calculated as of his April 12, 1999 priority date.¹¹ As the record currently stands, the petition was additionally not approvable on this basis.

The AAO notes that the NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The director's NOIR sufficiently detailed the evidence of the record, pointing out inconsistencies and misrepresentations, that would warrant a denial if unexplained and unrebutted, and thus was properly issued for good and sufficient cause.

In response to the NOIR, the petitioner provided:

- 1) Affidavit of the beneficiary, dated April 3, 2009 and copy of November 1, 2001, affidavit stating that he married [REDACTED] in good faith without knowledge of her prior marriage, that they separated approximately October 1, 2004,¹² and explaining discrepancies in testimony given at the [REDACTED] interview.
- 2) Copies of two affidavits from [REDACTED]. The first is dated September 4, 2007, stating that she met the beneficiary on June 17, 1997; that their first date was June 29, 1997; and that they ended relationship due to incompatibility. The second is dated November 1, 2001 and is a summary of her explanation for the discrepancies between her testimony and the testimony of the beneficiary at the Stokes interview held on October 16, 2001.
- 3) Copy of the 1999 life insurance policy taken out by the beneficiary as the insured naming [REDACTED] as the beneficiary.
- 4) Copies of selected bank statements from Astoria Federal Savings, Account number 8310xxx086, held in both the beneficiary and Rowell's name(s).
- 5) Copies of 2000 and 2001 installment payment agreements with the IRS addressed to

¹¹Besides net income and as an alternative method of reviewing a petitioner's ability to pay a proposed wage, USCIS will examine a petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. It represents a measure of liquidity during a given period and a possible resource out of which the proffered wage may be paid for that period. In this case, the corporate petitioner's year-end current assets (lines 1 through 6) and current liabilities (lines 16 through 18) are shown on Schedule L of its federal tax returns. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the corporate petitioner is expected to be able to pay the proffered wage out of those net current assets. Here, although the petitioner reflected substantial net current assets in the year(s) 1999 through 2007, it is also necessary to consider all other certified wages that it was obliged to cover during this period before making a positive finding as to its ability to pay this beneficiary's proffered salary.

¹² The record indicates that the beneficiary obtained a divorce from Rowell on July 31, 2007, from the Montgomery County Circuit Court in Maryland.

- both the beneficiary and [REDACTED]
- 6) Copies of jointly filed individual federal tax returns for 1999, 2000, 2001, and 2002. The 1999 return shows only business income claimed in addition to \$135 in taxable interest with \$2,497 owed in taxes. The 2000 return shows only business income claimed with \$145 in taxable interest and \$2,714 in taxes owed. The 2001 return shows only business income claimed with \$155 in taxable income and \$351 in taxes owed. The 2002 return shows only business income claimed with \$145 in taxable interest and \$338 in taxes owed.¹³
 - 7) Copies of affidavits from family members including [REDACTED] together with copies of undated photos stated to depict the beneficiary/[REDACTED] wedding and life together.
 - 8) Copies of federal tax returns and evidence of payment of wages relevant to the petitioner's continuing financial ability to pay the proffered wage.

On May 14, 2009, the director revoked the approval of the I-140 visa petition, noting that although joint documentation of the marriage was provided, it was not persuasive. The director noted that although the wedding photos were submitted, none of them included Ms. [REDACTED] friends [REDACTED] and [REDACTED] who are reported to have attended the wedding. He noted that the dinner photos appeared to have been taken the same day. The director also noted that the bank statements submitted in response to the notice of intent to revoke show months with no activity and failed to establish a commingling of finances between the couple such as would be expected to see with a couple with joint access to an account used to pay household and personal expenses.

The director additionally noted the discrepant testimony given by Ms. [REDACTED] and the beneficiary at the Stokes interview. He determined that the beneficiary's statement that Ms. [REDACTED] moved in with him immediately after the marriage in December was not consistent with Mr. [REDACTED] testimony that she lived with her friends, [REDACTED] for two months after the wedding prior to moving in with the beneficiary. (pp.11-12, Stokes transcript). The director additionally found that the June 2001 trip to Atlanta described by Ms. [REDACTED] was not consistent with the beneficiary's testimony in that she traveled by car with her friend [REDACTED] who drove. Ms. [REDACTED] stated that she spent the night at her friend's and they left in the morning. (p. 9, [REDACTED] transcript). In contrast, although the beneficiary knew that Ms. [REDACTED] went to Atlanta in June 2001, he was asked if she went by airplane, bus or car and he replied by "air." When asked if he met her at the airport when she returned, he said "Yes I went there but." When asked to describe what he meant by "but," the beneficiary said "Yes I went there." He was then queried "to the airport?" The beneficiary responded "to the airport." (p.20, Stokes transcript).

The director also noted that the district director had found that the discrepancies related to the household arrangements and religious practices were not resolved on reconciliation and that the

¹³ Prior to the official 2007 divorce degree, the beneficiary filed his taxes in 2004, 2005 and 2006 as "single."

beneficiary's responses were incomplete. Finally, the director observed that it has not been established that the [REDACTED] was free to enter a legal marriage as her marriage to [REDACTED] has not been shown to have been terminated before she married the beneficiary. The director notes that it was unlikely that the beneficiary was unaware of Ms. [REDACTED]'s marriage to Mr. [REDACTED] because of the overlapping dates. He noted that the [REDACTED] petition was filed April 17, 1997; on June 18, 1997, USCIS sent a request for additional evidence and in August 1997 Mr. [REDACTED] responded that additional time was required. [REDACTED] married the beneficiary on December 16, 1997. [REDACTED] affidavit dated September 4, 2007, noted that she had met the beneficiary at the apartment at [REDACTED] [REDACTED] where she lived with her friends [REDACTED], with her first date with the beneficiary occurring on June 29, 1997.

On appeal, counsel asserts that the petitioner has submitted proof of the beneficiary's *bona fide* marriage to Ms. [REDACTED] to the Immigration Court and to USCIS. He contends that the beneficiary was a victim of Ms. [REDACTED] duplicity and that the subsequent fraud was attributable to her actions and not to the beneficiary's *bona fide* intent that the marriage was made by him in good faith.

As a basis for denial, it is not necessary that the beneficiary have been convicted of, or even prosecuted for, the attempt or conspiracy to enter into a marriage for the purpose of evading the immigration laws. However, the evidence of such attempt or conspiracy must be documented in the alien's file and must be substantial and probative. *See Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). *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)).

There is substantial and probative evidence in the record of proceeding to support a reasonable inference that the beneficiary attempted to enter into a marriage for the purpose of evading the immigration laws. We note that there is virtually no evidence that the beneficiary and Ms. [REDACTED] have ever commingled financial resources. It is noted that the record contains a letter from Astoria

Federal Savings dated July 7, 1999, in which the balances in two accounts were itemized. One was the account held by both the beneficiary and Ms. [REDACTED] account number [REDACTED] in which the balance is stated to be \$2061.00. The other account number listed is account number [REDACTED]. This account was held by the beneficiary as sole owner. The balance was \$4,078.00 as of the date of the letter, July 7, 1999. It is additionally noted that the selected bank statements, submitted in response to the NOIR, exclusively showed the jointly held account 8310xxx086 with a minimal balance for several years ranging from \$11.87 to \$69.71. The one exception to these balances was the statement from July 24, 1999, showing both additions of \$2,050 and subtractions of \$2,051 and also in August 2001, just prior to the October 2001 [REDACTED] interview. It is noted that the taxable interest amounts shown on page 1 of all of the jointly filed income tax returns could not have been earned from the balances shown on the one jointly held bank account. Additionally, we do not believe that the testimony given to the district director in the Stokes interview is outweighed by the documentation of joint tax returns showing taxes owed for four years, affidavits from family members, or a \$50,000 life insurance policy.

Additionally, having reviewed the transcript from the Stokes interview relating to household amenities, we find that the district director's observations and the Nebraska Service Center director's findings to have merit. We note the following included among household arrangements described in the interview: Ms. [REDACTED] testimony that she cooked on an electric stove (p. 13, [REDACTED] transcript) and the beneficiary's testimony that fire comes out (p.23, [REDACTED] transcript) to be inconsistent, as well as the different responses related to whether the microwave is black or white. ([REDACTED] states black, p.12 of [REDACTED] transcript) (The beneficiary states that it is white, p.23). Additionally, they could not agree when they moved in together after the wedding. Further, it is noted that the discrepancy between the beneficiary's testimony and Ms. [REDACTED] testimony regarding the mode of transportation to Atlanta was inconsistent and unconvincing. (For a couple who never traveled together since their marriage in 1997, as testified by Ms. [REDACTED] the fact that the beneficiary did not know that his wife was traveling by automobile and not by airplane to Atlanta, Georgia, shows a lack of awareness that partners in a *bona fide* marriage would be expected to have). As noted above, the beneficiary claimed she went by air. (p. 20, Stokes transcript). Later, the transcript indicates that he attempted to retract this statement by claiming that he did not know how Ms. [REDACTED] traveled because he is busy at his job. (p.27, Stokes transcript). Further, the transcript does not indicate that he was interrupted in adding to his statement about going to the airport to meet her, as claimed in the beneficiary's subsequent affidavit, dated November 1, 2001, attempting to reconcile some of his statements. Rather, the interviewer gave him a chance to explain what he meant by "but," so that he could have explained at the interview what he later claimed in his affidavit, but he did not continue. (p.20, Stokes transcript). Further, it is noted that Ms. [REDACTED] was asked if her husband ever goes to a mosque and she replied, "Not really, but I've seen him pray." She adds that she has seen him pray twice in answer to a question as to how many times a day that the beneficiary prayed and additionally states that the beneficiary folds the prayer rug and puts it away. (p. 14, Stokes transcript). The beneficiary describes his Muslim prayer practice as not being a regular event but occurring sometimes on Friday. He stated that he used to go to the mosque, but not regularly. When asked about the specifics of his praying in the home facing the Holy Cava, the beneficiary states that he "perform my prayer in mosque not at home, I go to mosque I don't pray at home." (pp. 24-25).

The parties tried to rehabilitate this discrepant testimony, as to where the beneficiary prayed, in subsequent statements, in that the beneficiary was only referring to Friday prayers that he does not perform at home, but their initial statements remain inconsistent.

Therefore, an independent review of the documentation in the record of proceeding presents substantial and probative evidence to support a reasonable inference that the beneficiary attempted to enter into a prior marriage for the purpose of evading the 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.

In view of the foregoing, the AAO concludes that the director properly revoked the approval of the Form I-140. Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has determined that a notice of intent to revoke has been properly issued for "good and sufficient cause," and that the decision to revoke will be sustained where the evidence, including any evidence submitted by the petitioner, would warrant such denial. *Matter of Ho*, 19 I&N Dec. 582 at 590 (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). In this case, the evidence contained in the record at the time the decision was rendered, warranted such denial. We find that the director's notice of intent to revoke was supported by good and sufficient cause and the revocation is warranted.

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