

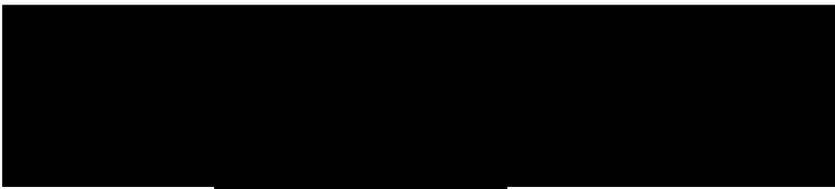


U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

B6



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JAN 11 2010**  
EAC 03 224 52286

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

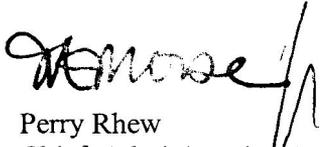
PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. In connection with the beneficiary's Form I-485, Application to Register Permanent Resident or Adjust Status, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR) on August 5, 2005. In a Notice of Revocation (NOR) dated December 29, 2005, the director ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker. The Administrative Appeals Office (AAO) sustained the petitioner's subsequent appeal on July 18, 2008. On May 22, 2009, the AAO elected to *sua sponte* reopen this matter pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii).<sup>1</sup> The AAO's decision will be withdrawn. The appeal will be dismissed. The petition's approval will remain revoked.

The petitioner is a meat by-products rendering facility. It seeks to employ the beneficiary permanently in the United States as a tallow/filter systems operator. The Form I-140 was filed on July 31, 2003. As required by statute, the petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U. S. Department of Labor. 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 denied the petition pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c).

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], 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." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

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

---

<sup>1</sup> The regulation at 8 C.F.R. § 103.5(a)(5)(ii) states:

Service motion with decision that may be unfavorable to affected party. When a Service officer, on his or her own motion, reopens a Service proceeding or reconsiders a Service decision, and the new decision may be unfavorable to the affected party, the officer shall give the affected party 30 days after service of the motion to submit a brief. The officer may extend the time period for good cause shown. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

The AAO notified the petitioner of its reopening of the matter and gave the petitioner 30 days to submit a brief. The petitioner's response is discussed herein.

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 ... [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:

*Fraudulent marriage prohibition.* Section 1040 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 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) of 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 203(b)(3)(A)(iii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(iii), 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 unskilled labor, not of a temporary or seasonal nature for which qualified workers are unavailable.

Prior to the filing of the Form I-140, there was another immigrant petition filed for the beneficiary by [REDACTED], a United States citizen.<sup>2</sup> The Form I-130, Petition for Alien Relative, was filed on April 17, 1995. The petition was denied on August 3, 1996, because the birth certificate for [REDACTED] was fraudulent, and the marriage certificate for the beneficiary and [REDACTED] was also fraudulent. The Form I-485 filed by the beneficiary was also denied since the Form I-130 was denied.

---

<sup>2</sup> The occurrence of this marriage is now denied by the beneficiary in the petitioner's employment based petition.

In the prior marriage based petition, the Form G-325A signed and submitted by the beneficiary identified [REDACTED] as his spouse. The record of proceeding contains a marriage certificate from the Town of North Hempstead, County of Nassau, State of New York stating that the beneficiary was married to [REDACTED] on August 20, 1994.

In the NOIR, the director informed the petitioner of the following:

The record includes a copy of a marriage certificate for [the beneficiary] and [REDACTED] married on August 20, 1994. The record appears to establish the beneficiary attempted to obtain an immigration benefit through fraud.

This letter shall serve as notice that it is the intention of the Service to revoke the approval previously granted for the aforementioned petition.

The Service will not make a final decision regarding the revocation of your petition's approval for thirty (30) days. During that time, you may submit any evidence that you feel will overcome the reasons for revocation.

Submit clear and convincing evidence to establish that the marriage between [REDACTED] and [REDACTED] was not entered into for the purpose of evading any provision of immigration law. Such evidence may include but is not limited to:

- a) Documentation showing joint ownership of property, such as mortgage agreements or payments, property titles, or property registration;
- b) Lease(s) showing joint tenancy at a common residence signed by you, your spouse and the individual(s) renting the property;
- c) Documentation showing commingling of financial resources such as:
  - I. Jointly held bank account(s) or credit card statements.
  - II. Utility bill(s) such as telephone, gas, electric, water, etc. or statement(s) issued in both your names.
  - III. Jointly held insurance policies, or policies in which one of you is listed as the dependent of the primary carrier.
  - IV. Jointly filed income taxes.
- d) Birth certificate(s) of child(ren) born to you and this spouse.
- e) Affidavits of third parties having knowledge of the bona fides of the marriage relationship.

Affidavits should be supported, if possible, by one or more types of documentary evidence listed above. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit; and his or her relationship to the petitioner, beneficiary, or indicated spouse, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit.)

Also, submit a valid marriage certificate for the marriage for [the beneficiary] and [REDACTED]. An appropriate civil authority should issue a marriage certificate. In order for the marriage to be considered valid for immigration purposes, it must have been registered with a civil authority from the location where the marriage took place. The document must contain the seal of the issuing office including the date of registration and signature of the registrar. Please note, a religious authority such as a priest, minister, or rabbi is not considered to be a civil authority.

The beneficiary filed a new Form I-485 on January 20, 2005, after the Form I-140 filed by the petitioner was approved. Under Part 7 of the Form I-140, the beneficiary does not list a spouse or children. The beneficiary's address is given as [REDACTED]. The Form I-485 lists the beneficiary's address as [REDACTED]. Under Part 3, Processing Information, of the Form I-485, the beneficiary answers the question, "Have you ever before applied for permanent resident status in the U.S.?" as yes with a date of April 17, 1995 in New York, NY and that the application was denied. Under B of Part 3, the beneficiary lists a wife, [REDACTED]<sup>3</sup> and a son, [REDACTED] born on January 9, 2004.

The director received counsel's response to the NOID on September 6, 2005. Counsel's response included an affidavit from the beneficiary, dated July 8, 2004, a copy of a No Record of Certification from Town of North Hempstead, County of Nassau, State of New York, a copy of the beneficiary's Brazilian passport, a copy of the beneficiary's Brazilian birth certificate with translation, a copy of the visa page, obtained from a Freedom of Information Act (FOIA) request, a copy of an English translation and Brazilian birth record, not the beneficiary's, obtained by the FOIA request, and an attorney's certification, signed on April 17, 1995, by [REDACTED]. Counsel claimed:

To validate the applicant's credibility that he had no knowledge of what was submitted and after reading his affidavit it can be summed up that he gave the appropriate information about his family life and entry in to the United States, a copy of his passport and two photographs. As he stated he signed forms in the blank and was told that the forms would be completed from the information that was given. He then became a victim of a scam and was duped into believing that he was being assisted properly.

Upon review of his FOIA it can be concluded that the applicant was a victim of a scam. The documents that were submitted are not his, he could not have obtained those documents and the information on the applications is not accurate. All to be considered to the credibility of the applicant that he had no knowledge of what had transpired. The following information is to be considered as not relating to he [sic] applicant:

- 1) The applicant never resided in New York, as the address states on the forms;

---

<sup>3</sup> The beneficiary and [REDACTED] were married on December 23, 2003, in Lowell, Massachusetts.

[REDACTED] were married on December 23, 2003, in Lowell,

- 2) The applicant was not married;
- 3) The applicant entered the United States with a valid visa on 6/11/1990, see a complete copy of applicant's Brazilian passport. In the marriage petition file, the applicant's first page of his valid passport was submitted but the "visa" page submitted is not from the same passport; the passport number is different; the name on the visa is "blanked" out and the entry date is not applicant's entry date;
- 4) No city of birth is listed for the applicant;
- 5) A Brazilian birth certificate is submitted, however a review of the translation versus the Brazilian birth document reveals;
  - a. The listed civil registry is from two different cities;
  - b. The date of birth is not the same;
  - c. There is no name on the foreign document;
  - d. There are hand-written entries on the foreign document.
- 6) The marriage certificate is not valid. This was confirmed in our I-485 package by our investigation into the issuance of this document.

The director issued the NOR on December 29, 2005 noting:

A review of the record indicates the beneficiary signed the Petition for Alien Relative (Form I-130), Application to Register Permanent Residence or Adjust Status (Form I-485), and the Form G-325A indicating the beneficiary was attempting to obtain an immigration benefit through a marriage to a United States citizen. The record does not establish a valid marriage or that the beneficiary had no knowledge of the type of petition being filed on his behalf. The record establishes the beneficiary attempted to obtain an immigration benefit through a marriage to a United States citizen.

On January 13, 2006, the petitioner appealed the revocation. Relevant evidence submitted on appeal included counsel's brief; previously submitted documentation, documentation from the FOIA request, a copy printed from United States Citizenship and Immigration Services (USCIS) website viewed on February 16, 2006, a press release from the office of [REDACTED] Central District of California, by [REDACTED], August 10, 2004, and an article entitled *Corruption at the Gates*, September 12-13, 2002 from a website at <http://www.npr.org/programs/atc/features/2002/sept/bordercorruption>.

On appeal, counsel stated:

In considering [the beneficiary's] response [to the NOIR], the Service failed to consider the contention that [the beneficiary] signed immigration forms in blank, as detailed in his affidavit. (A.19). The Service incorrectly stated that [the beneficiary] signed the I-130 form. (A. 19, *see also* A. 20-24). The Service improperly and incorrectly considered the presence of [the beneficiary's] signature on the documents to be dispositive of his intent to obtain a benefit through a fraudulent marriage certificate. (A. 19).

The Service's failure to consider this contention was arbitrary, capricious, and an abuse of discretion. Moreover, the Service did not have any substantial, probative information that would rebut [the beneficiary's] contentions.

Since this matter can be resolved solely upon a determination of credibility, the Service should have given him an opportunity to be heard in person, wherein his statements could be considered by the finder of fact by observing his demeanor and subjecting him to direct and cross-examination. The lack of such an opportunity violates the requirement that he be permitted to "offer evidence in support of the petition or self petition and in opposition to the grounds alleged for revocation of the approval." 8 C.F.R. § 205.2(b). It also violates his rights under the Fifth Amendment, Due Process Clause of the United States Constitution.

As noted in the AAO's prior decision, the petitioner did not demonstrate any error by the director in conducting its review of the petition. Further, the petitioner did not demonstrate any resultant prejudice such as would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975). The petitioner provided no evidence in support of its claims on appeal. 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). Accordingly, the petitioner's claim is without merit. In addition, the court in *De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004), held that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge. The petitioner has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case. The petitioner's primary complaint is that the director revoked the petition's approval. The petitioner has not met its burden of proof and the revocation was the proper result under the regulation. Accordingly, the petitioner's claim is without merit.

On appeal, counsel also stated:

[The beneficiary] is a native and citizen of Brazil. (A. 12-18). He arrived in the United States as a visitor via Miami, Florida on June 11, 1990. (A. 8, 17). In 1995, [the beneficiary] engaged the services of one [REDACTED], a Brazilian, in order to obtain legal status in the United States. (A. 8). [The beneficiary] believed that [REDACTED] and the services he would render were legitimate. *Id.* For his services, [the beneficiary] paid [REDACTED] the sum of \$3,000.00, \$500.00 to be paid initially, the remainder to be paid when they "arrived at the Immigration Department," where [REDACTED]'s service would be concluded. *Id.*

[The beneficiary] spoke with [REDACTED] and answered honestly the questions he posed. *Id.* Due to the fact that his native language was Portuguese, and that he was unsophisticated in legal matters, he was unable to fill these forms out himself. (*See* A. 8). At [REDACTED]'s direction, he signed several immigration forms in blank, with the

belief that [redacted] would subsequently fill in the accurate information on the forms. *Id.*

Days later, [the beneficiary] met [redacted] to travel to New York. *Id.* His friend, one [redacted] also was obtaining assistance from [redacted], along with approximately 9-12 others. *Id.* Most of the individuals traveled to New York in a van rented by [redacted] (though [the beneficiary] traveled separately in a vehicle owned by his friend, [redacted]). *Id.*

Upon their arrival in New York, they met with an associate of [redacted] described as “a Haitian man, who works for the immigration service” (discovered to be [redacted] (A. 5, 9). At the time, each of the individuals in [redacted] group paid this man the remaining \$2,500.00 in cash and were told that “everything had been arranged.” (A. 9). [The beneficiary] asked a number of questions regarding the process, but was also given that vague answer. *Id.* One of the individuals in the group had asked if their cases would involve a marriage, and the response was in the negative. *Id.*

[The beneficiary] and the others entered the Immigration Building and met with a federal officer. *Id.* He was asked such questions as his name, address, and place of birth. *Id.* He answered the officer’s questions honestly. *Id.* The officer then took his picture and gave him a work permit. *Id.* [The beneficiary] was informed that “processing information” for his case would be mailed to him at his home address. *Id.*

He never did receive the “processing information.” *Id.* This is because the information was mailed to the false address on the fraudulent documents, an address in New York. (A. 9, 26-28). In or about November of 1995, he contacted [redacted] to inquire as to the status of his information, and he was told to wait. (A.9). Later, [the beneficiary] learned through the local newspaper that [redacted] had been arrested for, *inter alia*, filing false papers. *Id.*

Subsequently, [the beneficiary] engaged the services of [redacted] who obtained his information pursuant to a Freedom of Information Act request. (A. 5). For the first time, [the beneficiary] learned that fraudulent papers, including a false marriage certificate to one [redacted] had been filed in order to secure his work authorization. (A. 5-6). He also learned that the information had been mailed to an address in New York, which information had been returned as undeliverable, and his application denied. (A. 25-28).

\* \* \*

Had the Service given [the beneficiary] an opportunity to appear and testify in support of his contention, the Service would have been able to observe his demeanor and render a credibility finding, thus giving proper attention to his evidence. [The beneficiary] would testify that he was the victim of [redacted] signed immigration documents in

blank, believing that [REDACTED] would honestly complete them, and that [the beneficiary] was completely unaware that a fraudulent marriage certificate had been submitted on his behalf.

Instead, [the beneficiary] was relegated to a lifeless affidavit to give his side of the story. This is a violation of his right to “offer evidence” pursuant to 8 C.F.R. § 205.2(b). It is also a violation to his rights to Due Process under the Fifth Amendment to the United States Constitution.

The Service compounded this problem with its utter disregard of his contention. Despite [the beneficiary’s] statement that he had signed documents in blank, believing that they would be completed honestly, the Service rejected his argument on the sole basis that he signed the documents in question. The Service also relied upon an incorrect fact – that [the beneficiary] had signed the I-130. That form is signed by the petitioner, however, and not the beneficiary, and has no space for [the beneficiary’s] signature. Thus, the Service’s conclusion was incorrect, arbitrary, capricious, and an abuse of discretion.

Further, the Service lacked substantial and probative evidence that [the beneficiary] had the intent to submit the fraudulent marriage certificate, as there is absolutely no evidence to rebut his contention.

Accordingly, [the beneficiary’s] appeal should be sustained, the decision to revoke his approved visa application should be reversed, and the approval of the visa petition should be reinstated.

Counsel submitted an affidavit from the beneficiary which relates his version of the events regarding the fraudulent filing of a Form I-130 and Form I-485. Counsel has not, however, provided any evidence which corroborates the beneficiary’s claim. There are no newspaper clippings, no police reports, and no affidavits from other victims<sup>4</sup> or friends or neighbors who remember or can vouch for the beneficiary’s claims. It is unreasonable to expect USCIS to accept an affidavit of the beneficiary, as the evidence in the record contradicts the beneficiary’s statements.<sup>5</sup>

---

<sup>4</sup> Counsel claims that “fellow-victims of [REDACTED] are extremely difficult to find, if they are still in the United States at all, and certainly would not be willing to sign a document that brings them to the attention of the Department of Homeland Security.” The AAO finds that this is strictly counsel’s belief. There is no evidence in the record that additional victims would not come forward. 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).

<sup>5</sup> If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Section 204(c) of the Act provides that no petition shall be approved if the alien “has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.” Section 204(c) of the Act was amended by section 4(a) of the Immigration Marriage Fraud Amendments of 1986 (IMFA), Pub. L. No. 99-639, 100 Stat. 3537, 3543 (1986). Prior to IMFA, Congress held hearings on fraudulent marriage and fiancé arrangements and discussed the following fraudulent acts that aliens had committed in order to obtain immigration benefits: concealment of prior undissolved marriages, issuance of counterfeit New York City marriage certificates in support of petitions for permanent residence, and use of “stolen identification documents and stand-in grooms and brides to ‘marry’ U.S. citizens.” See *Immigration Marriage Fraud: Hearing Before the Subcomm. on Immigration and Refugee Policy of the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. 2 (1985) (statements of INS Commissioner [REDACTED] and [REDACTED] Federation of American Immigration Reform). After the hearing, Congress enacted IMFA and added section 204(c)(2) of the Act, 1000 Stat. at 3543. “Paper” marriages are now covered by the “...attempted...to enter into a marriage” language of the statute. Based on the scenarios discussed in the 1985 hearing and the subsequent amendment to the Act, Congress clearly intended that section 204(c) of the Act be applied to aliens who seek an immigration benefit through a fraudulent marriage, even in cases where there is no marriage in fact.

The beneficiary’s disavowal of participation in fraud cannot be sustained in light of his admission of willingly signing a blank document. Specifically, his failure to apprise himself of the contents of the paperwork or the information being submitted constitutes deliberate avoidance and does not absolve him of responsibility for the content of his petition or the materials submitted in support. See *Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6<sup>th</sup> Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application’s contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. See *Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11<sup>th</sup> Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5<sup>th</sup> Cir. 1993). To allow the beneficiary to absolve himself of responsibility by simply claiming that he had no knowledge or participation in a matter where he provided all the supporting documents and signed blank documents would have serious negative consequences for USCIS and the administration of the nation’s immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution.

The Form I-485 and Form G-325A filed in connection with the Form I-130 bear the beneficiary’s signature. The front passport page submitted with that Form I-485 is the beneficiary’s passport and contains his signature. The beneficiary had his fingerprints taken in connection with that Form I-485. We find the statements that the beneficiary was a non-participant in the preparation and submission of all the documents mentioned above not credible. *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 remaining evidence offered in support of the

visa petition.”

It is noted that counsel made a great issue of the director’s mistake in stating that the beneficiary signed the Form I-130. The fact remains that the beneficiary did sign other documents that were submitted to obtain an immigration benefit, including Form I-485 and Form G-325A. Even if the beneficiary did sign those documents in blank, those documents were used to obtain immigration benefits, including work authorization. As set forth in the beneficiary’s affidavit, the beneficiary used that work authorization document to obtain a social security number.

Counsel also noted on appeal that [REDACTED] was involved in the scam and stated that his “name is known amongst immigration practitioners and the Department of Homeland Security in the Boston area as being corrupt.” Again, counsel submitted no evidence of these claims. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. A review of public records shows that Moses Osayame tendered his resignation to the bar, although he did not do so until 2007, and his resignation does not appear to relate to immigration matters. See <http://www.courts.state.ny.us/courts/ad2/calendar/webcal/decisions/2007/D17134.pdf> (accessed December 10, 2009).

Counsel also stated on appeal that the beneficiary’s answer during his interview in New York relating to his address should have raised a red flag, and counsel submits several articles relating to corrupt immigration officials. If counsel is suggesting that the official who interviewed the beneficiary was corrupt or in on the “scam,” she has not provided any evidence of this contention. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The AAO initially sustained the petitioner’s appeal. However, as previously noted, on May 22, 2009, the AAO elected to *sua sponte* reopen this matter pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii).

On July 31, 2003, you filed a Form I-140, Immigrant Petition for Alien Worker, seeking the beneficiary’s services as a tallow/filter systems operator pursuant to section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3)(A)(iii). The Director of the Vermont Service Center revoked the approval of the petition on December 29, 2005. The Administrative Appeals Office (AAO) sustained the petitioner’s subsequent appeal on July 18, 2008.

This office had elected to *sua sponte* reopen this matter pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii).

Information has come to light that raises questions as to the credibility of the petitioner’s appellate claims. Pursuant to United States Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 103.2(b)(16)(i), you are hereby notified of this derogatory information and provided with an opportunity to respond prior to the issuance of the AAO’s decision.

The petitioner submitted to the record a document dated August 2, 2004, purportedly issued by [REDACTED], Registrar of Vital Statistics, Town of North Hempstead, County of Nassau, State of New York, entitled "No Record Certification" (No Record Certification). The AAO conducted its own investigation regarding the authenticity of the No Record Certification. In a telephone conversation with the Clerk's Office in the Town of North Hempstead, New York, the Clerk confirmed that the No Record Certification submitted to the record is fraudulent. While the Clerk's Office confirmed that there was no record of a marriage between [REDACTED] and [REDACTED] the Clerk's Office also confirmed that it did not issue the No Record Certification submitted by the petitioner to the record. The Clerk's Office submitted to the AAO the proper form of a No Record Certification issued by their office, a copy of which is attached.

In response, counsel submits evidence of her request to the Clerk's Office in the Town of North Hempstead, New York, for clarification of the validity or non-existence of the marriage certificate. Counsel has established that the no record certification was issued to her by the Clerk's Office in the Town of North Hempstead, New York, despite the Clerk's confirmation to our office that the certification was fraudulent. The information provided to our office by the Clerk's Office in the Town of North Hempstead, New York, establishes that there are irregularities in the issuance of the no record certification. Regardless, the existence of the no record certification does not eliminate the fact that the beneficiary submitted a fraudulent marriage certificate to obtain an immigration benefit.

The record establishes the beneficiary attempted to obtain an immigration benefit through a marriage to a United States citizen. We find that there is substantial and probative evidence of an attempt or conspiracy by the beneficiary 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.<sup>6</sup> We also find that the beneficiary by fraud or willfully misrepresenting a material fact, sought to procure or has sought to procure or has procured a visa, other documentation, or admission into the United States. The beneficiary is in violation of Section 212(a)(6)(c)(i) of the Act first mentioned above.

We find that the beneficiary is ineligible for the classification sought based on the beneficiary's fraudulent marriage to a United States citizen pursuant to Section 204(c) of the Act, 8 U.S.C. § 1154(c).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

---

<sup>6</sup> We note that after hearing about the arrest of [REDACTED] in 1995, and despite being "fearful about what he filed" as set forth in the beneficiary's affidavit, the beneficiary failed to alert immigration authorities about possible irregularities in his immigration filings.

**ORDER:** The appeal is dismissed.

**FURTHER ORDER:** The AAO finds that the beneficiary knowingly submitted fraudulent documents in an effort to mislead USCIS on elements material to his eligibility for a benefit sought under the immigration laws of the United States.