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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

B6

FILE:

Office: NEBRASKA SERVICE CENTER

Date: APR 01 2011

IN RE:

Petitioner:

Beneficiary:

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

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 our 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*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska 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, Immigrant Petition for Alien Worker. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

The petitioner is a health care service company. It seeks to employ the beneficiary permanently in the United States as a caregiver under section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

The petitioner's Form ETA 9089 was filed with DOL on November 22, 2002 and certified by DOL on December 21, 2006. The petitioner subsequently filed Form I-140 with U.S. Citizenship and Immigration Services (USCIS) on April 9, 2007, which was approved on November 20, 2007. The merits of the Form I-140 have never been in question.

The record of proceeding is consolidated, with a separate prior proceeding including a marriage-based petition filed for the beneficiary by his spouse, [REDACTED] on April 16, 2001. That petition was approved on March 8, 2005.

On May 12, 2009, a divorce decree was issued dissolving the marriage between [REDACTED] and the beneficiary. On October 8, 2009, the beneficiary's spouse, [REDACTED] withdrew the Form I-130 petition.<sup>1</sup> On January 11, 2010, the U.S. Citizenship and Immigration Services (USCIS) [REDACTED] Office issued a decision revoking the approval of the Form I-130 petition finding that the marriage was entered into for the purpose of evading the immigrant laws under section 204(c) of the Immigration and Nationality Act (the Act) based on the petitioner's testimony and admissions.

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."

On March 18, 2010, the director sent a NOIR to the petitioner, stating that the beneficiary was ineligible to have the Form I-140 approved on his behalf under the provisions of section 204(c) of the Act. Regarding the revocation on notice of an immigrant petition under Section 205 of the Act, the BIA has stated:

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<sup>1</sup> The regulation at 8 C.F.R. 205.1(a)(3)(i)(A) provides that an immediate relative petition is automatically revoked upon its written withdrawal by the petitioner prior to the beneficiary's adjustment of status to lawful permanent resident.

In *Matter of* [REDACTED], . . . 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 unrebutted, 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 director’s NOIR sufficiently detailed the evidence of record, pointing out the petitioning spouse’s misrepresentations and assertions regarding the fraudulent nature of the marriage, that would warrant a denial if unexplained and unrebutted, and thus was properly issued for good and sufficient cause.

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 the instant petition was revoked as a result of another immigrant visa petition filed on the beneficiary’s behalf. A Form I-130, Petition for Alien Relative (Form I-130), was filed on the beneficiary’s behalf on April 16, 2001. Concurrent with the filing of Form I-130, the beneficiary also sought lawful permanent residence and employment authorization as the immediate relative of a U.S. citizen. The record contains the completed Form I-130 and the Forms G-325 for both the petitioner and beneficiary, photographs, a copy of the petitioner’s lawful permanent resident card, and a copy of the marriage certificate between the beneficiary and [REDACTED]. The Form I-130 was approved on March 8, 2005.

On January 11, 2010, the Field Office Director of the U.S. Citizenship and Immigration Services (USCIS) office located in [REDACTED] revoked the approval of the Form I-130 because the petitioner, after the Form I-130 approval, wanted to withdraw the petition. In a telephonic interview regarding her marriage to the beneficiary, the petitioner stated that her marriage to the beneficiary was a favor to her friend and her friend’s family. The petitioner also stated in her sworn statement that she does not remember signing the Form I-130; that the marriage was never consummated; that she only resided with the beneficiary for a few months and that during that time period, she occupied a separate room. The petitioner stated that she joined the United States Marine Corps in an attempt to separate from the beneficiary completely.

Section 204(c) provides for the following:

Notwithstanding the provisions of subsection (b)<sup>2</sup> no petition shall be approved if:

- (1) the alien has previously been accorded, or has sought to be accorded, an

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<sup>2</sup> 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.

- 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 May 28, 2010, 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, was insufficient to overcome the evidence in the record of proceeding that supported a reasonable inference that the beneficiary's prior marriage with [REDACTED] was entered into for the purpose of evading immigration laws.

The regulation at 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.

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 the 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).

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. The record of proceeding contains evidence that a family-based immigrant petition was filed to obtain an immigration benefit for the beneficiary.

On appeal, counsel argues that USCIS erred in revoking the approval of the Form I-130 petition since it failed to take into account the documentation submitted by the beneficiary to show that his marriage was bona fide. Counsel states that the USCIS decision was based on the petitioner's statement without looking into the other documents submitted by the beneficiary.

The record of proceeding contains the following evidence relating to the Petition for Alien Relative, Form I-130: Form I-130 petition; a copy of the beneficiary and his wife's marriage certificate from

2000; e-mail correspondence between USCIS and the petitioner; the petitioner's withdrawal of the Form I-130 visa petition stating the reasons for the withdrawal; a copy of the beneficiary's birth certificate; a copy of the petitioner's permanent residence card; a copy of the beneficiary's passport; a sworn statement from the beneficiary explaining why the relationship ended; photos of the beneficiary and [REDACTED] which counsel states were taken when they were still living together; a copy of letters from the beneficiary's spouse, [REDACTED] to the beneficiary; a copy of the petition for nullity of marriage filed by [REDACTED]; a copy of the Notice of Hearing; and a copy of the judgment issued by the Superior Court of [REDACTED] ordering the dissolution of the marriage of the beneficiary and [REDACTED].

In the beneficiary's declaration he states that he married the petitioner because he loved her and that the relationship soured when she joined the military. However, the beneficiary did not provide any evidence of his relationship with his spouse. The beneficiary only submitted three photographs and two letters from his spouse. The beneficiary states his spouse joined the military while they were married but does not mention the date she enlisted or the branch of the military that she joined. In the petition for nullity of marriage, the statistical facts indicate that the beneficiary and spouse never lived together; they were married on September 18, 2000 and separated on the same date. The beneficiary did not submit any documentation showing commingling of financial resources such as joint checking and saving accounts. Further, the beneficiary did not provide insurance policies, property leases, federal income tax returns, printed checks with both the beneficiary and his wife's names on them, various bills, such as energy and cable bills, listing both the beneficiary and his wife's names; driver's licenses showing the same address and affidavits of third parties having knowledge or other evidence of the bona fides of their marital relationship.

Therefore, 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 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.

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. The approval of the employment-based immigrant visa petition remains revoked.