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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
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FILE:



Office: NEBRASKA SERVICE CENTER

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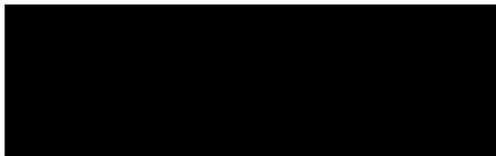
Petitioner:



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:

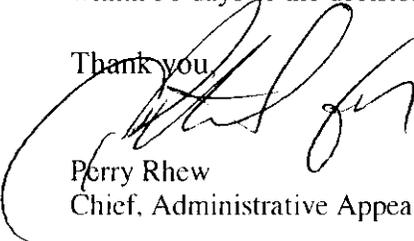


INSTRUCTIONS:

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 preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a retail investment business.¹ It seeks to employ the beneficiary permanently in the United States as a manager under section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).² As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the marriage fraud bar under section 204(c) of the Act applies to the case and denied the petition accordingly.

The petitioner, through current counsel, submits additional evidence on appeal and maintains that the marriage bar does not apply as the beneficiary's marriage was a *bona fide* relationship that simply "did not work out."

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 AAO maintains plenary power to review each appeal 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

¹The petitioner's documentation submitted in response to the AAO's notice of derogatory information indicates that the petitioner operates as [REDACTED]. The petitioner's 2005 tax return also reflects that the petitioner's business product or service is gas and groceries.

²Section 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. The petitioner must demonstrate that a beneficiary has the necessary education, training and experience specified on the labor certification as of the priority date, the day the Form ETA 750 was accepted for processing by any office within DOL's employment system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).

³We note that the Immigrant Petition for Alien Worker (Form I-140) is not approvable based on the current record because, at a minimum, the beneficiary's claim of prior experience on Part B of the ETA 750 is inconsistent and raises doubts as to his claimed two years of experience as a manager as required by the terms of Part A of the ETA 750. The record contains a biographic questionnaire (Form G-325 A) signed by the beneficiary on March 12, 2001, filed with Form I-130, Petition for Alien Relative. He claims that he worked for a [REDACTED] [sic] [REDACTED] [REDACTED] as a *cashier* from December 2000 to present (date of signing March 12, 2001). The beneficiary also claimed that he had worked as a *cashier* for [REDACTED] from December 1998 to December 2000. (Emphasis added.) On Part B of the ETA 750, however, signed

As reflected in the record, the petitioner filed the Form I-140 on February 15, 2007. The Service Center director denied it on October 20, 2007, determining that the marriage bar provisions under section 204(c) of the Act applied to this case:

Notwithstanding the provisions of subsection (b)⁴ 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.

Specifically, the director determined that the Form I-140 petition was ineligible for approval because of a previously filed Petition for Alien Relative (Form I-130), which sought to sponsor the beneficiary as the husband of a U.S. citizen, [REDACTED]. The Service Center director noted that the Notice of Intent to Deny (NOID) the Form I-130, which had been issued on May 12, 2004, focused solely on the fact that the beneficiary attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The Form I-130 petition was subsequently denied

by the beneficiary on February 10, 2005, he claims that he was employed as a *manager* for [REDACTED] from October 1999 to February 2001. In the job just prior to this one as shown on Part B of the ETA 750, the beneficiary also claims that he also worked as a *manager* for [REDACTED] from January 1996 to September 1999. (Emphasis added.) As neither the jobs, employers nor dates have been consistently represented, it impairs the credibility of the beneficiary's other claimed employment offered to fulfill the terms of the Form ETA 750. As such, this evidence is not considered reliable. This petition would not be eligible for approval on this basis even if the fraudulent marriage bar did not apply. 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 143, 145 (3d Cir. 2004)(AAO *de novo* authority well-recognized by federal courts). It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

⁴ 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.

on August 2, 2004, based on the allegations discussed in the intent and because no response or rebuttal had been submitted in response to the NOID.

The record indicates that the beneficiary, a native of Pakistan, [REDACTED] married [REDACTED] on February 23, 2001 in Houston, Texas. [REDACTED] signed the Form I-130 on March 12, 2001, which was filed with the Service on March 16, 2001. Concurrent with the filing of Form I-130, the beneficiary also sought lawful permanent residence as the immediate relative of a U.S. citizen. An interview at the district office was held on October 25, 2002. The petitioner did not submit any documentation in support of the marital relationship. However, in connection with this interview and on the same date, the petitioner, [REDACTED] signed a statement that she had been living "in a *bona fide* marriage relationship, including cohabitation from the day of her marriage as indicated on the Immigration Form I-130." The NOID indicates that at the interview, [REDACTED] gave an incorrect date of her marriage, initially claimed that she and the beneficiary had been residing together since October 2001, and then admitted that they were currently separated. Further, she had given birth to a child, [REDACTED], whose father was [REDACTED] not the beneficiary. The record indicates that this birth took place on August 26, 2002. The NOID advised the petitioner that she had failed to present evidence to show that the marriage was not entered for the purpose of evading the immigration laws⁶ and determined that the marriage was not *bona fide*. The NOID further advised of monetary and criminal sanctions relating to marriage fraud pertinent to 18 U.S.C. § 1325. The petitioner was allowed thirty days to respond to the NOID in order present rebuttal, but no response was submitted. The record indicates that [REDACTED] and the beneficiary were divorced on January 10, 2003. As noted above, the district director denied the Form I-130 on August 2, 2004, citing the petition's denial for failure to respond to the allegations in the NOID.

On appeal, counsel asserts that that the marriage was *bona fide*, but that for reasons that are common to many marriages, the relationship simply deteriorated and could not be maintained. He offers an affidavit, dated November 14, 2007, from [REDACTED]. She maintains that the marriage was *bona fide*, but the relationship deteriorated due to age differences and differences in interests. [REDACTED] states that in the second year of marriage, "we started drifting apart." She denies that the marriage was fraudulent or that she was paid to marry the beneficiary. Counsel also submits copies of two pieces of correspondence, dated July 18, 2002 from United Central Bank and addressed to [REDACTED] or [the beneficiary]. They are advisories that two checks, amounting to \$500 and \$1,753, respectively, written to [REDACTED] by [REDACTED] had been returned. Counsel also provided a copy of a letter, dated June 29, 2005,⁷ from United Central Bank,

⁵ The I-130 petitioner signed both the Form I-130 and the October 25, 2002, statement using her maiden name. It is noted that a copy of a Texas temporary driving permit was obtained, which shows that it was issued on October 21, 2002, (just prior to the district office interview) to [REDACTED] [REDACTED] married name.

⁶ See *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975).

⁷The beneficiary's Form G-325A filed with Form I-485, Application to Register Permanent Residence or Adjust Status states that the marriage was terminated on January 1, 2003.

addressed to both the petitioner and beneficiary, as above, and advising that some data containing customer information had been lost and that they would monitor the situation. Additional documentation submitted on appeal includes an account ledger from [REDACTED] and a copy of the parties' Texas marriage license.

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

It is noted that the account ledger from [REDACTED] contains no address and lists only the beneficiary's name. Further, we do not find [REDACTED] affidavit to be probative, given the facts and her previous statements at the district office interview. We note that in her affidavit, she omits any mention of a child born to her on August 26, 2002. The fact that she claims that the parties started drifting apart in the second year of the marriage is a remarkable understatement, given that she was pregnant with another man's child during most of 2002 and, (assuming a nine-month pregnancy), had conceived this child sometime in November 2001 following her marriage to the beneficiary. We find that the evidence submitted on appeal does not outweigh the evidence in the record indicating that the marriage was not *bona fide* and entered in order to attempt to evade immigration law.

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

Beyond the decision of the director, it is noted that on July 28, 2010, the petitioner was advised that state electronic corporate records indicated that the petitioning business was not in good standing. In response, counsel submitted documentation reflecting that the petitioning corporation had been forfeited or revoked on July 24, 2009, but had been reinstated by the state on August 4, 2010. The petitioner additionally provided six copies of documents from 2009. These documents related to flood insurance, telephone and utility bills, and a security alarm bill. It is noted, however, that the petitioner provided no evidence of income that would show a business in continuous operation, which would support a continuing *bona fide* job offer to the beneficiary and would also be relevant to the petitioner's continuing ability to pay the proffered wage.⁸ 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 143, 145 (3d Cir. 2004)(AAO *de novo* authority well-recognized by federal courts). In addition to the foregoing reasons, the AAO finds that the I-140 is

⁸The most recent federal income tax return contained in the record is the petitioner's 2005 Form 1120, U.S. Corporation Income Tax Return.

not eligible for approval on this basis.

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.