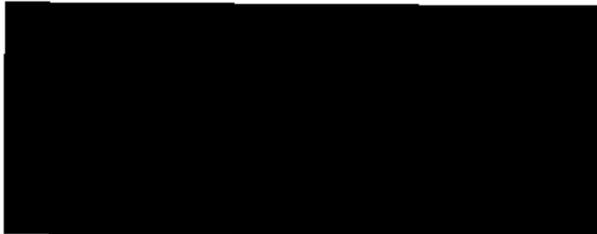


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B6

DATE: **AUG 14 2012** OFFICE: NEBRASKA SERVICE CENTER FILE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

*Elizabeth McCormack*

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 is an apparel design, production and retail company. It seeks to employ the beneficiary permanently in the United States as a production planner under section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). 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 director determined that the marriage fraud bar under section 204(c) of the Act applies to the case and denied the petition accordingly.

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.

As set forth in the director's April 18, 2009 denial, 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 this petition was denied as a result of the beneficiary's other immigrant visa petition. A Form I-130, Petition for Alien Relative (Form I-130), was filed on the beneficiary's behalf on May 2, 2000. 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 file contains the completed forms, signed by the beneficiary, photographs, and a copy of a marriage certificate between the beneficiary and Kyle Cowan.

The Form I-130 and accompanying Form I-485 were approved on October 5, 2000. On October 7, 2002, the beneficiary filed a Form I-751 Petition to Remove the Conditions on Residence. On January 31, 2006, the director sent a Notice of Intent to Deny Petition to Remove Conditions on Residence (Form I-751) and Terminate Conditional Permanent Resident Status. A decision was issued by the Seattle acting district director of the U.S. Citizenship and Immigration Services (USCIS) office on March 20, 2006. The decision denied the Form I-751 because although the beneficiary and [REDACTED] presented themselves as a legitimate married couple during the original interview pursuant to the Form I-130, a subsequent investigation indicated that the couple did not and had not lived together and that the relationship was otherwise not bona fide on inception. Specifically, the director found that the beneficiary paid off [REDACTED] credit card debt soon after the original interview in exchange for his sponsorship of the beneficiary and that [REDACTED] moved to Minnesota before the original interview so that the parties were not living together as indicated. In addition, certain contradictory statements were made during a subsequent interview and the information relayed from the beneficiary about [REDACTED] did not indicate that she knew information about him as would be expected of a married couple.

Section 204(c) provides for the following:

Notwithstanding the provisions of subsection (b)<sup>1</sup> 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.

The record of proceeding contains the following relevant evidence:

- A letter sent anonymously stating that the beneficiary and [REDACTED] entered into a marriage to secure a green card for the beneficiary in exchange for her paying [REDACTED] credit card debt and providing him a monthly stipend;
- The beneficiary's statements during a November 29, 2001 interview that she married [REDACTED] a month after meeting him, that she lived with Mr. [REDACTED] for approximately two months before the other people living in the apartment asked him to leave, that [REDACTED] moved to Minnesota on August 30, 2000, that she paid [REDACTED] credit card bill because she feared that the collection agency could recover against her;
- The beneficiary's statement on her affidavit dated June 16, 2009 that she was unemployed and therefore living with friends at their expense from January 2000 to August 2000 as compared to the beneficiary's August 3, 2007 G-325A filed in conjunction with her Form I-485 stating that she was employed as an international business manager with [REDACTED] [REDACTED] from November 1997 through May 2000 and as compared to her June 16, 2009 affidavit stating that she worked for [REDACTED] until February 2000;
- The beneficiary's contradictory statements made during the November 29, 2001 interview that first she regretted marrying [REDACTED], then she did not regret marrying him; that [REDACTED] had a marijuana addiction, then he had a "temptation" instead of an addiction; that [REDACTED] moved to Minnesota to remove himself from drug temptations and to paint his brother's house, then that he was going to attend college, then that he did not enroll in school;
- The beneficiary's statement that she hoped to reconcile with [REDACTED] and that she hoped he would move back from Minnesota followed within six months with a petition for divorce;
- The beneficiary's September 26, 2002 statement through counsel that she did not intend to reside permanently in the United States followed by the beneficiary's October 7, 2002 filing of the Form I-751, followed by her November 19, 2002 surrender of her lawful permanent residence

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<sup>1</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.

On appeal, counsel asserts the beneficiary never received the director's Notice of Intent to Deny so did not have an opportunity to respond to the evidence of marriage fraud and that adequate evidence was available to the investigator and the director to demonstrate the bona fides of the beneficiary's marriage to Mr. [REDACTED]

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.

On appeal, the petitioner submitted affidavits from the beneficiary, [REDACTED] a former roommate of the couple and a witness to their wedding.

[REDACTED] affidavit stated that he met the beneficiary at the end of December 1999 and that they decided to move in together shortly thereafter. The couple stayed in a room in an apartment leased by [REDACTED]. After their marriage in February 2000, [REDACTED] began interfering with the relationship and forced him to move out. [REDACTED] stated that he continued to spend the night regularly in the apartment with the beneficiary. He stated that the beneficiary paid his credit card debt "just as any couple would do to help each other out." After the beneficiary got her job with the petitioner, [REDACTED] stated that he started hanging out with friends, "drinking too much and sometimes smok[ing] marijuana." In order to be able to financially attend school and to get away from these "bad influences," [REDACTED] decided to move in with his brother in Minnesota. He stated that only "in early 2002" did he and the beneficiary discuss whether the marriage could continue and both decided that it could not.

As an attachment to the affidavit, [REDACTED] provided e-mail correspondence between [REDACTED] and [REDACTED] that included a letter written on April 3, 2001 to Immigration & Naturalization Service Investigations Division about the beneficiary. This letter, sent anonymously, accused the beneficiary of marrying [REDACTED] for immigration benefits. Specifically, the letter states that [REDACTED] "lives and works in Minnesota and [the beneficiary] lives and works in Seattle. These two have never lived together, do not jointly own property together and do not hold any bank accounts jointly in their names." Further, the beneficiary "negotiated to pay off [REDACTED] credit card debt, which totaled around \$3,000 and then \$300 per month until she received her Permanent Resident Alien status. A divorce is planned immediately after [the beneficiary] receives this status." [REDACTED] stated that this letter written by [REDACTED] was completely false and unfounded.

The beneficiary's affidavit stated that she met [REDACTED] "a couple of months" after she arrived in October 1999 to visit her friend [REDACTED]. She states that [REDACTED] agreed that [REDACTED] could stay with her in the apartment beginning January 2000. She stated that she and [REDACTED] continued to live in the apartment without paying rent until May or June 2000 when [REDACTED] decided that [REDACTED] needed to move out. After [REDACTED] moved out to live with his mother, he continued to spend several nights per week with the beneficiary. The beneficiary stated that she had no choice about where to live as she did not have the funds to pay rent. After moving out, [REDACTED] began using marijuana. [REDACTED] decided to go to Minnesota to go to school since tuition was lower than in Washington and he could get away from his drug using friends. In

the fall of 2000, after [REDACTED] had moved to Minnesota, the beneficiary stated that she answered the phone call of a debt collector who stated that she, as [REDACTED] wife, would be liable for his credit card debts, so she paid the debt. The beneficiary stated that she learned of the anonymous letter sent by [REDACTED] in May or June 2001 and that the allegations in the letter are false. The beneficiary stated that she would not be able to find a job in Minnesota and [REDACTED] was not going to move back to Washington, so the couple decided to divorce in February 2002. She further stated that she filed her I-751 in October 2002, but withdrew it in November 2002 due to "disillusion[ment] and frustrate[ion] with the bureaucracy of the immigration process."

The affidavit from [REDACTED] states that the beneficiary began staying at an apartment that he rented with [REDACTED] in 1999. Mr. [REDACTED] moved in "sometime in early 2000." [REDACTED] states that the four roommates took excursions together and the beneficiary and [REDACTED] took trips alone as well. He witnessed the beneficiary's wedding to [REDACTED] states that [REDACTED] forced Mr. [REDACTED] to move out of the apartment in the spring of 2000 and that he did not have any further contact with [REDACTED]. He states that the anonymous letter sent by [REDACTED] is untrue. He "think[s]" that [REDACTED] learned of [REDACTED] credit card debt when the parties lived together as the parties discussed finances and that the beneficiary "did not pay [REDACTED] to marry him."

Counsel states that the beneficiary never received a copy of the Notice of Intent to Deny the I-751, which is why the beneficiary did not respond to the allegations of marriage fraud contained therein. Counsel states that the notice requirement contained in 8 C.F.R. § 103.2(b)(16)(i)<sup>2</sup> was violated. 8 U.S.C. § 1305(a) requires every non-immigrant to provide notice of an address change within ten days of the change being made. USCIS sent the Notice of Intent to Deny the Form I-751 to the beneficiary's address as provided by her on the Form I-751. The beneficiary did not inform USCIS at any time that the address provided by her on the Form I-751 had been changed. In any event, the beneficiary had the opportunity to present all necessary evidence on appeal, so any prejudice suffered by having the NOID sent to the beneficiary's prior address would be remedied on appeal.

Counsel states on appeal that available witnesses were not interviewed, including [REDACTED] and [REDACTED] the sister of the author of the anonymous letter, both of whom accompanied the beneficiary to her 2001 interview concerning the marriage. The beneficiary provided an affidavit

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<sup>2</sup> 8 C.F.R. § 103.2(b)(16)(i) states:

If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

from [REDACTED] with the appeal and had the opportunity to provide an affidavit from [REDACTED] as well.

Where there is reason to doubt the validity of the marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the purpose of evading the immigration laws. Such evidence could take many forms, including, but not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences. *See Matter of Soriano*, I&N Dec. 764 (BIA 1988).

It is unclear what additional evidence might have been presented through an interview beyond the information contained in an affidavit. The initial evidence established that the beneficiary and [REDACTED] knew each other for little over a month before they married and that they lived in the same apartment for five months or less. In addition, [REDACTED] moved to Minnesota approximately six months after the date of marriage and did not reveal that he had moved to the interviewing officer when interviewed about the Form I-130. When viewed in conjunction with the letter submitted by [REDACTED] ample evidence existed to call into doubt the validity of the marital relationship.

In response to the evidence calling into doubt the validity of the marital relationship, the petitioner submitted the affidavits discussed above and a copy of bank statements showing both the beneficiary's and [REDACTED] names. The affidavits submitted do not establish that the relationship between the beneficiary and [REDACTED] was bona fide. The affidavits from the beneficiary and [REDACTED] are not independent, objective evidence establishing the marital relationship, but instead are self-serving statements by the parties directly affected by the charges of marriage fraud. The affidavit from [REDACTED] mostly concerned the actions of his ex-girlfriend, [REDACTED] and how those actions resulted in [REDACTED] moving out of the shared apartment.

In addition, certain discrepancies raise questions about the bona fides of the marriage. First, the marriage followed a courtship of less than two months and was attended by only two friends and no family although [REDACTED] family was local. In addition, although the beneficiary's affidavit stated that she did not have enough money to rent an apartment on her own, the beneficiary's Form G-325A stated that she worked for [REDACTED] until May 2000, three months after the parties were married, and that the beneficiary secured her current position in August 2000, which was before [REDACTED] stated in his affidavit that he decided to move to Minnesota. It is unclear through these statements how the parties could not afford to live together in their own apartment after they were married. In addition, although the beneficiary and [REDACTED] stated that [REDACTED] continued to spend several nights a week in the apartment after being asked to leave by [REDACTED], the affidavit from [REDACTED], a resident of the apartment, stated that he had no further contact with [REDACTED] after he moved out.

Also, the bank statements provided, although they bear [REDACTED] name, do not demonstrate that he actually used the account. In addition, the beneficiary stated that [REDACTED] rarely used the account. This evidence is insufficient to establish merged finances that would evidence a bona fide relationship. No other evidence was submitted to demonstrate that the parties merged their finances.

In addition to the evidence submitted concerning the marriage, discrepancies are noted in the beneficiary's work experience as expressed on the G-325A and in the beneficiary's affidavit. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (stating that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition).

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.

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.