

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



BE

Date: **NOV 28 2012**

Office: VERMONT 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:

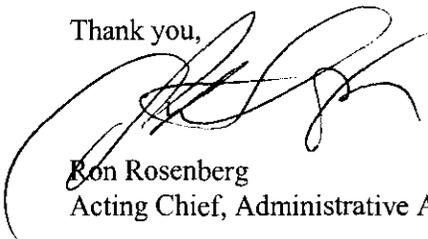


INSTRUCTIONS:

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,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. On further review of the record, in connection with a prior decision on the beneficiary's prior submitted Form I-751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR) based on section 204(c) of the Immigration and Nationality Act, 8 U.S.C. § 1154(c). In a Notice of Revocation (NOR), the Director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The petitioner filed a motion to reconsider/motion to reopen. The Director issued a decision granting the motion and affirming his prior revocation decision. The matter then came before the Administrative Appeals Office (AAO) on appeal, and the AAO issued a decision dismissing the appeal. The petitioner then filed two motions to reopen/motions to reconsider, one of which was granted and the previous decision of the AAO was affirmed.<sup>1</sup> The second motion was not granted. The matter is now before the AAO on a third motion to reopen and motion to reconsider. The motion will be granted, the petition re-opened, and the previous decisions of the AAO dated November 10, 2004, August 22, 2006, and February 12, 2008 will be affirmed. The petition's approval will remain revoked.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner is a driving school. It seeks to employ the beneficiary permanently in the United States as a manager. The director revoked the approval of the instant immigrant petition pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c). The revocation was based on the record, which shows that a family-based immigrant petition had been denied based on a written request of the sponsor and on the failure of the beneficiary to establish that his marriage was not entered into solely in order to procure immigration benefits. On November 10, 2004, the AAO affirmed the director's revocation of the petition's approval. On August 22, 2006, the AAO affirmed its prior decision dismissing the appeal because the evidence in the record contained substantial and probative evidence that the beneficiary's marriage to [REDACTED] [U.S. citizen spouse, name abbreviated] was entered into for the sole purpose of evading immigration laws. On February 12, 2008, the AAO dismissed the petitioner's motion to reopen or reconsider because it found that the motion did not meet the standard for a motion to reopen or motion to reconsider. The AAO stated that an affidavit from the beneficiary's former wife was not submitted with the motion and therefore the motion did not include new evidence.

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<sup>1</sup> 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.

In the instant motion, counsel states that: “The Petitioner submitted an affidavit of the Beneficiary’s former wife, [REDACTED] via Federal Express, to the Service on September 22, 2006. It is clear from the AAO’s decision that this affidavit was not included in the record for the AAO’s evaluation.”<sup>2</sup> Counsel also submitted a copy of the affidavit provided by the beneficiary’s former wife, [REDACTED] dated September 21, 2006, along with a handwritten FedEx shipping label addressed to the Vermont Service Center dated September 22, 2006, and a FedEx delivery confirmation dated September 25, 2006.

The AAO notes that the affidavit signed by [REDACTED] on September 21, 2006 is the fourth affidavit provided in the course of this matter. Her first affidavit, which was provided at the district office interview and dated September 22, 1992, is entitled “withdraw the joint petition” and states that she had only married the beneficiary on paper and to “help him out.” She also stated that they had never lived together as husband and wife. [REDACTED] affidavit also states, “I . . . have a baby bry [sic] a friend.” The second affidavit, which was signed by [REDACTED] on July 25, 2002 states that because she felt threatened by the examiner at the interview on September 22, 1992, she provided the first affidavit. However, she stated that the marriage was entered into in good faith and not intended to circumvent any immigration laws. [REDACTED] third affidavit, dated December 9, 2004, is very similar to her second affidavit, with the exception that it mentions that her parents met the beneficiary on numerous occasions, and while they would be willing to provide testimony, it would be difficult to obtain an affidavit from them due to the fact that they lived out of state and were elderly. It is unclear why their statements or evidence in support could not be mailed. [REDACTED] fourth affidavit, signed on September 21, 2006, closely mirrors the beneficiary’s affidavit dated September 20, 2006, attempting to address the inconsistencies in the record discussed by the AAO in its February 12, 2008 decision.

The AAO does not find [REDACTED] affidavits to be probative, given the facts and her previous statements at the district office interview in 1992 that she only entered into the marriage to “help him out,” that she never lived with him, and that she had a child by a friend. The AAO notes that both the beneficiary’s and [REDACTED] affidavits, dated September 20, 2006 and September 21, 2006, respectively, state that she misunderstood the question from the examiner regarding whether she had any children to mean whether she had any children with the beneficiary. However, when both were asked at the February 11, 1992 district office interview who resided at [REDACTED] they both stated that they lived with the beneficiary’s cousin. No reference to [REDACTED] four year-old child was mentioned when directly asked who lives in their home at [REDACTED]

The AAO also notes that both the beneficiary’s and his former wife’s affidavits state that they shared “a full and complete life together” involving birthdays, holidays, and graduations.<sup>3</sup> However, the

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<sup>2</sup> As counsel states that the filing did not contain any new evidence and lacked the affidavit of the beneficiary’s former wife, the AAO’s decision not to grant the motion to reopen would be correct as the filing lacked new facts supported by evidence.

<sup>3</sup> Additionally, not only did [REDACTED] become pregnant with a friend’s child during the marriage (according to an affidavit from the beneficiary dated September 20, 2006), but the beneficiary also

record does not include any photographs or other documentation proving this.<sup>4</sup> Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The AAO finds that the evidence submitted on motion does not outweigh the evidence in the record indicating that: the marriage was not *bona fide*; and was entered into in order to attempt to evade immigration law.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The petitioner has failed to submit any evidence to sufficiently establish that the director's revocation was not based on good and sufficient cause.

Therefore, an independent review of the documentation<sup>5</sup> reflects ample evidence that the beneficiary attempted to evade the immigration laws by marrying [REDACTED] and that attempt is documented in the record. Nothing submitted with this, or any of the prior motions to reopen, overcomes the basis of the revocation. Thus, the AAO's prior 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, and the petition's approval will remain revoked.

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 motion to reopen is granted; the AAO affirms its prior decisions upholding the revocation of the petition's approval of November 10, 2004, August 22, 2006, and February 12, 2008. The petition's approval remains revoked.

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had a child with another woman on August 28, 1992 (according to the beneficiary's Form I-485, Application to Register Permanent Residence or Adjust Status, which he signed on April 4, 2001), approximately three weeks before the September 22, 1992 district office interview.

<sup>4</sup> The AAO notes that the record includes two photographs of a man and a woman sitting on a bed; however, these photographs do not demonstrate "a full and complete life together" as stated in the affidavits.

<sup>5</sup> See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).