



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **OCT 10 2012** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

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

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:

[REDACTED]

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, approved the Form I-140, Immigrant Petition for Alien Worker. The director later revoked the approval of the petition because the beneficiary had previously entered into a fraudulent marriage to a U.S. citizen in order to obtain lawful permanent residence. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Prior to the filing of the instant petition, the beneficiary married a U.S. citizen. The beneficiary's U.S. citizen spouse filed an I-130, Immigrant Petition for Alien Relative, concurrently with the beneficiary's application to adjust status and application for employment authorization.

The District Director, New York District Office, denied the I-130 petition because the parties failed to appear for a rescheduled interview and to respond to a subsequent notice of intent to deny the petition.

The record contains a sworn statement of the beneficiary, dated April 28, 1993. In the statement, the beneficiary admits that he paid a person \$2,500 to arrange a marriage with a U.S. citizen in order to obtain lawful permanent residence. The statement states that he married the U.S. citizen the same date that he met her and then they filed for his lawful permanent residence.

Section 204 of the Act governs the procedures for granting immigrant status. 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 director initially approved the I-140 petition that is the subject of this appeal. On March 21, 2008, the director issued a Notice of Intent to Revoke (NOIR). The notice informed the petitioner that the beneficiary's fraudulent marriage was the basis of the intended revocation.

The NOIR was properly issued pursuant to *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988) and *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987). Both cases held that a notice of intent to revoke a visa petition is properly issued for "good and sufficient cause" when the evidence of record at the time of issuance, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The director's NOIR sufficiently detailed

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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.

the evidence of the record, pointing out that the beneficiary admitted, under oath, to a marriage entered into for the purpose of evading immigration laws, that would warrant a denial if unexplained and un rebutted, and thus was properly issued for good and sufficient cause.

The petitioner failed to respond to the NOIR. Accordingly, on May 12, 2008, the director revoked the approval of the I-140 petition.

On appeal, counsel asserts that on April 28, 1993, the beneficiary was questioned extensively by two immigration special agents concerning an individual under investigation for arranging fraudulent marriages. Counsel claims that the beneficiary was told by the agents that if he cooperated with the investigation, the agents would assist him in obtaining legal status in the United States. Counsel also claims that the beneficiary was also told that his statements would not have a negative impact on his application for permanent residence. Counsel's claims are supported by an affidavit from the beneficiary.

Counsel also claims on appeal that the beneficiary's Fifth Amendment rights were violated during the questioning, as the immigration agents failed to notify him of his right to be represented by counsel and that anything he said could later be used against him.

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 marriage-based immigrant petition was filed to obtain an immigration benefit for the beneficiary. Per the record, the facts of the case are as follows: the beneficiary entered the United States on September 11, 1988, at New York City on a B-2 visitor visa. He claimed that he first met with a marriage arranger in April 1990 and was told he could marry a United States citizen for \$2,500. He made two cash payments, the second on April 27, 1990. Later that same day was married to a U.S. citizen at the Queens Courthouse in Kew Gardens, New York. On May 9, 1990 the couple filed a Form I-130 Petition for Alien Relative and an application for adjustment of status. Their interview was rescheduled because the U.S. citizen spouse failed to provide evidence of her identification at the interview. On October 29, 1990, after failing to show up for the rescheduled interview, and after failing to respond to the notice of intent to deny, the Service denied the Form I-130.

The denial was appealed to the Board of Immigration Appeals on November 8, 1990 and reopened. Both the beneficiary and his wife were interviewed by immigration agents about their marriage, on July 8, 1991. At this time, the beneficiary gave a sworn statement in which he claimed he and his

U.S. citizen wife first met in a night club. He also stated that he paid no money to marry her. On April 28, 1993 the beneficiary gave another sworn statement to immigration special agents in which he admitted to paying \$2,500 to a marriage arranger and entering into a marriage for the purposes of evading the immigration laws. With his signature, he attested to giving the statement voluntarily. Specifically, the sworn statement contains the following paragraph:

I, [REDACTED], acknowledge that the above-named officer has identified himself to me as an officer of the United States Immigration and Naturalization Service authorized by law to administer oaths and take testimony in connection with the enforcement of the Immigration and Nationality laws of the United States. He has informed me that he desires to take my sworn statement regarding my fraudulent marriage to [REDACTED]. He has told me that my statement must be made freely and voluntarily. I am willing to make such a statement. I swear that I will tell the truth, the whole truth, and nothing but the truth, so help me, God.

Therefore, the beneficiary conceded that he engaged in marriage fraud.

Other than generally referring to the Fifth Amendment, counsel has failed to specifically articulate and support his assertion that the beneficiary's Fifth Amendment right against self-incrimination was violated when immigration officers obtained the above-referenced sworn statement and the use of that statement in the current administrative proceeding pertaining to the issuance of immigration benefits. Accordingly, counsel's Fifth Amendment claim is rejected.

The beneficiary's cooperation with the Service investigation of the individual with whom he conspired to arrange the fraudulent marriage does not mitigate the bar to approval of any subsequent employment-based petition. There is no qualifying language in Section 204(c) or the case law interpreting it that allows for leniency. Instead, the law calls for an absolute and permanent bar to permanent residence. The fact that the beneficiary was never accorded a benefit is not relevant. *See Matter of \_\_\_*, (AAO April 23, 2004), 81 No. 43 *Interpreter Releases* 1573, 1582-83 (Nov. 8, 2004).

Counsel further contends that the beneficiary's statement of April 28, 1993 should not be considered based on the Doctrine of Laches. The Doctrine of Laches is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to the adverse party, operates as a bar in court of equity.<sup>2</sup> However, the decisions of USCIS, as an administrative agency, are bound by statute, regulations, and precedent case decisions. The principles of equity are not applicable before the AAO. No statutory or regulatory basis exists to conclude that the passage of time mitigates the clear grounds for revocation in this case.

The director's determination that the beneficiary sought to be accorded an immediate relative or

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<sup>2</sup> See, e.g., *Wooded Shores Property Owners Ass'n Inc. v. Mathews*, 37 Ill. App.3d. 334, 345 N.E.2d. 186, 189

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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.

**ORDER:** The appeal is dismissed. The approval of the employment-based immigrant visa petition remains revoked.