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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: AUG 15 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. On June 27, 2002, 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 (the Act), 8 U.S.C. § 1154(c). On November 8, 2002, the Director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140) in a Notice of Revocation (NOR). 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 has subsequently filed three motions to reopen/motions to reconsider. The AAO granted the first and third motions and affirmed its prior decisions. The AAO dismissed the second motion. On December 24, 2012, the petitioner filed the instant fourth motion to reconsider.[1] The motion will be granted, the petition will be reconsidered, and the previous decisions of the AAO dated November 10, 2004, August 22, 2006, February 12, 2008, and November 28, 2012 will be affirmed. The petition's approval will remain revoked.

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 or 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[2] is a driving school and 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

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[1] 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.

[2] The record reflects that was incorporated on October 5, 1992 and, according to the Maryland Secretary of State, became forfeited as of October 3, 1994. The labor certification was filed on June 13, 1997 under the name listing the same address as which at that time had been forfeited. The Form I-140 states that the petitioner was established in November 1987. The tax returns in the record for 1997 state the employer's name as with an Employer Identification Number (EIN) of The Form I-140 was filed on July 24, 2000, also under the name with the same EIN as listed on the tax returns A new entity named subsequently became incorporated on October 24, 2008, after the filings of the labor certification and the Form I-140. It is unclear from the record whether this entity is the same entity as the labor certification employer, or a successor-in-interest to it. In any further filings, the petitioner must resolve the discrepancies regarding the date the petitioner was forfeited (1994), the dates the labor certification and Form I-140 were filed (1997 and 2000, respectively), and the date the subsequent entity was incorporated (2008). Additionally, the petitioner would need to establish that the entity which was incorporated in 2008 is the successor-in-interest to the entity that was

section 204(c) of the Act, 8 U.S.C. § 1154(c), following a prior decision on the beneficiary's previously submitted Form I-751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status. The record demonstrates that the 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 he had not entered into his marriage 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 [the beneficiary's then 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 was not submitted with the motion and therefore the motion did not include new evidence. On November 28, 2012, the AAO dismissed the motion after again reviewing the evidence in the record and finding sufficient evidence that the beneficiary had entered into the marriage with for the purpose of receiving an immigration benefit.

The record reflects that signed her name below two statements she wrote at the district office interview in Baltimore, Maryland, on September 22, 1992; one is written on a sheet of legal paper, and the second is written as part of a formal document. In the statement on legal paper, she wrote at the top, "withdraw the joint petition," and below it she wrote that the beneficiary did not live at the address with her and she did not live with the beneficiary in . She also wrote that she had only married the beneficiary on paper and to "help him out," that they had never

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forfeited in 1994. USCIS has not issued regulations governing immigrant visa petitions filed by a successor-in-interest employer. Instead, such matters are adjudicated in accordance with *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986) ("*Matter of Dial Auto*") a binding, legacy Immigration and Naturalization Service (INS) decision that was designated as a precedent by the Commissioner in 1986. The regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions are binding on all immigration officers in the administration of the Act. Considering *Matter of Dial Auto* and the generally accepted definition of successor-in-interest, a petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the petitioning successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the beneficiary's predecessor employer. Second, the petitioning successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the petitioning successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. *See Matter of Dial Auto*, 19 I&N Dec. at 482. In any further filings, the petitioner must demonstrate that which was incorporated in 2008, is the successor-in-interest to the entity listed on the Form I-140 and labor certification, or that it otherwise existed at the time of the labor certification and the Form I-140 filings.

lived together as husband and wife, and that she has a baby by a friend. statement on the formal document, also signed on September 22, 1992, states that she only married the beneficiary "on paper . . . to help him out" and that they have never lived together as husband and wife.

The record contains an affidavit signed by on July 25, 2002, which states that she wrote the statements noted above because she felt threatened by the examiner at the interview on September 22, 1992. She stated that at the interview on September 22, 1992 at the Baltimore District Office she was "unduly pressured and threatened by the examiner" to make the above-referenced statements. She states in this affidavit that "[she] was told that the Immigration Service knew that [she] had lied and that the only way [she] could avoid perjury was to make these statements." This testimony suggests that made a statement verbally prior to the writings that led to the writings. It is unclear from the record if these statements were in substance equivalent to the writings of September 22, 1992. The petitioner has not demonstrated that those statements (that she and the beneficiary never lived together and that she had a baby with another person) were false, which suggests that the September 22, 1992 statements were truthful and accurate when written.

In her subsequent affidavits, states that in the September 22, 1992 interview she was forced to write what she alleges are untruthful statements. However, the written statements made on September 22, 1992 tend to provide indications that diminish subsequent claims that she felt "unduly pressured and threatened by the examiner." She signed her name on the sheet of legal paper after writing that she wanted to withdraw the joint petition, that she and the beneficiary did not live together, that she married him to help him out, and that she had a baby by a friend. She then wrote on the formal document that she only married the beneficiary "on paper . . . to help him out" and that they never lived together as husband and wife. In the statement on the legal paper, stated that the beneficiary did not live at the address and she had not lived with the beneficiary in Each of the statements wrote at that interview provides additional details to the other statements she wrote that day to support the truth of her statements. For example, it appears that included her statement that she had a baby by a friend to provide additional evidence that she and the beneficiary did not have a legitimate marriage. The focus of her statements were on whether she and the beneficiary had a *bona fide* marriage, and it appears that the only reason she would have included this detail would be to provide support to her statement that she married the beneficiary to "help him out" and that they were only married "on paper." She stated in several different ways that she and the beneficiary had not lived together as husband and wife. The totality of the statements made at the September 22, 1992 interview, and the specificity of these statements, outweigh her subsequent attempts at retracting these statements.

The AAO does not find that there is sufficient evidence in the record to overcome previous statements at the district office interview in 1992 that she only entered into the marriage to "help [the beneficiary] out," that she never lived with him, that she had a child by a friend, and that they had never lived together as husband and wife. 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, but there is no evidence of this.[3] Going on record without supporting

[3] As noted by the AAO in its November 28, 2012 decision, not only did become pregnant with a friend's child during the marriage (according to an affidavit from the beneficiary dated September

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, the AAO finds that there is sufficient evidence in the record that demonstrates the beneficiary attempted to evade the immigration laws by marrying The evidence submitted with this motion, or any of the prior motions to reopen, fails to overcome 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.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reconsider is granted; the AAO affirms its prior decisions upholding the revocation of the petition's approval of November 10, 2004, August 22, 2006, February 12, 2008 and November 28, 2012. The petition's approval remains revoked.

20, 2006), but the beneficiary also 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.