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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: JUN 2 5 2013 OFFICE: NEBRASKA SERVICE CENTER [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 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,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, Nebraska Service Center (the director), and the Administrative Appeals Office (AAO) dismissed the subsequent appeal on February 18, 2010. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The regulation at 8 C.F.R. § 103.2(a)(3) states, "[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 [U.S. Citizenship and Immigration Services (USCIS)] 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." The record shows that the motion to reconsider is properly filed and timely. The motion to reconsider asserts that the AAO erred in its conclusions in its dismissal of the appeal and cites pertinent decisions, and therefore, qualifies for consideration under 8 C.F.R. § 103.5(a)(3).

The AAO first notes that the record contains several petitions that were filed on behalf of the beneficiary. The procedural history in this case is documented by the record and incorporated into this decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review 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).

The petitioner is a private household. It seeks to employ the beneficiary permanently in the United States as a home care aide. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). As required by statute, a Form ETA 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanies the petition. The director determined that the beneficiary had previously entered into a marriage with a U.S. citizen to evade the immigration laws and denied the petition pursuant to section 204(c) of the Immigration and Nationality Act (the Act). The AAO concurred with the director's decision.

On motion, counsel asserts that the AAO's conclusion that the divorce decree is fraudulent is erroneous. Counsel asserts that the Embassy of Sierra Leone conducted its own independent review of the matter and confirmed the authenticity of the Court's order. Therefore, the divorce decree should be recognized by the U.S.

Section 204(c) provides for the following:

> Notwithstanding the provisions of subsection (b)[1] no petition shall be approved if:

[1] 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.

(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 regulation 8 C.F.R. § 204.2(a)(1)(ii) states in pertinent part:

> Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

Counsel submits a statement, dated August 3, 2010, from from Republic of Sierra Leone, which states that the divorce between the beneficiary, and registered on December 6, 1992 is authentic. Counsel also submits a letter from Minister Counselor and which states that after an investigation with the Office of the Registrar of the he is "satisfied that the attached copy of divorce certificate" is authentic and attaches a copy of the divorce decree signed by Counsel includes a letter, dated March 22, 2000, from who confirms that the divorce decree is an authentic document. Counsel also submits a letter dated April 25, 2003, from the Registrar's office with an illegible signature, which states that retired in 1994.

The record reflects that a consular investigation has determined that the divorce decree and the birth certificate for the beneficiary, which the petitioner submitted to USCIS, were fraudulent.[2] The record also reveals that the director has determined that the beneficiary's marriage to , a U.S. citizen, was entered into for the purpose of evading the immigration laws. Evidence submitted on motion does not provide details regarding how the authenticity of the divorce decree was determined; rather the letters make subjective assertions that the author was either "satisfied" or "confirm[s]" that the divorce decree was authentic. The letters provide no explanation what process was used or how the authenticity of the divorce decree was

[2] The AAO notes that the fraudulent nature of the birth certificate has not been disputed by the petitioner on motion, nor has any evidence been submitted to establish its authenticity.

determined. Therefore, we find these letters insufficient to overcome the previous finding of fraud.

Furthermore, the record contains other evidence, such as [redacted]'s statement revealing that he married the beneficiary "to help her get her green card" and that their marriage was not consummated. Although, [redacted] later stated that he made a false confession about the purpose of his marriage to the beneficiary, the record as it stands does not provide independent and objective evidence demonstrating where the truth lies. 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 (BIA 1988). *Matter of Ho* also states: "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." *Id.* at 591-592. The record does not contain independent and objective evidence resolving the discrepancies and inconsistencies in the record.

Evidence submitted on motion attempts to rebut the falsity of the divorce decree; however, no independent and objective evidence was submitted on motion to rebut the previous finding that the beneficiary entered into a marriage with [redacted] for the purpose of evading the immigration laws. We find that there is substantial and probative evidence of an attempt or conspiracy by the beneficiary and other individuals who have attempted or conspired to enter into a marriage in violation of the regulation 8 C.F.R. § 204.2(a)(1)(ii) for the purpose of evading the immigration laws.

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. Accordingly, the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reconsider is granted, the previous decision of the AAO is affirmed, and the petition remains denied.