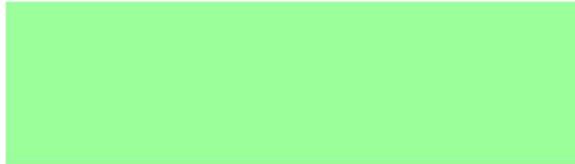


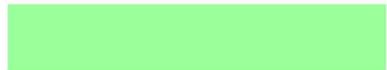
(b)(6)



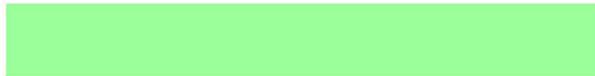
U.S. Citizenship  
and Immigration  
Services



DATE: **FEB 20 2014** OFFICE: TEXAS SERVICE CENTER

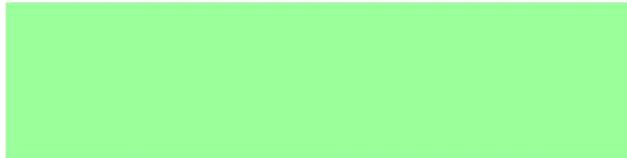


IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(i)

ON BEHALF OF PETITIONER:

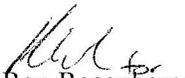


INSTRUCTIONS:

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 preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as an Hispanic Television Production Company. It seeks to employ the beneficiary permanently in the United States as a script supervisor under section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). 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.

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).

As set forth in the director's August 15, 2013, denial, at 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 April 26, 2009. 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 [REDACTED]

In connection with the Form I-130, a decision was issued by the district director of the U.S. Citizenship and Immigration Services (USCIS) office located in Hialeah, Florida, on October 20, 2009. The decision denied the Form I-130 because during their August 17, 2009 interview the beneficiary and her spouse provided contradictory answers in response to questions about the following topics:

- The beneficiary's entry into the United States;
- When they began dating;
- Where they went immediately following their wedding ceremony;
- Where the beneficiary lived before they moved to the address where they resided when the petition was filed;
- Where the beneficiary's spouse lived before they moved to the address where they resided when the petition was filed;
- When they moved in together;
- The ages of the beneficiary's spouse's sons;
- Where they stayed when they visited Colombia in March 2009; and,
- Where they spent Christmas 2008.

The beneficiary was notified of these discrepancies in the district director's September 9, 2009, Notice of Intent to Deny. The district director addressed the rebuttals from the beneficiary and her spouse in her October 20, 2009, Notice of Decision and concluded "that the marriage entered into between you and the beneficiary was for the sole purpose of conveying immigration benefits to the beneficiary."

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.

On appeal, the petitioner submits a statement from the beneficiary; a statement from the beneficiary's spouse; a photocopy of the 2008 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, filed jointly by the beneficiary and her spouse; "screen-shot" printouts of insurance records; a photocopy of a lease for an apartment signed by the beneficiary and her spouse covering a period from October 2008 through September 2009; and photos of the beneficiary and her spouse. Counsel asserts that the director erred by not providing the petitioner with copies of the transcript of the marriage interview as well as copies of the Notice of Intent to Deny and the Notice of Decision issued by the district director in relation to the previously-filed Form I-130 petition.

It is noted that the statements submitted on appeal from the beneficiary and her spouse are nearly identical, with the only differences being the substitution of names. Both statements reference "difficult periods" and refer to the marriage in the past tense, but neither statement indicates whether they are still married. Both statements claim that they were married in [REDACTED] and "had a wedding party at the [REDACTED]". However, the beneficiary's spouse had previously testified that they "went to [REDACTED]" following their wedding. Both statements state that the beneficiary's "three aunts, three cousins and many of our friends attended the party" and the supporting photographs show a group of people at a celebration with cake and dancing. However, the beneficiary's spouse previously testified that the wedding celebration was attended by "only 2 of us." Also, several photographs show the beneficiary, her spouse, and a group of people at what appears to be a church, while the beneficiary's spouse previously testified that they were married on the beach.

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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.

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 petition. It is incumbent upon 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Rather than overcome the discrepancies discussed by the director, the evidence submitted on appeal actually contains additional discrepancies and inconsistencies.

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.

Beyond the decision of the director, the petitioner has also failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. See 8 C.F.R. § 204.5(g)(2).

In determining the petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage.<sup>2</sup> If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In the instant case, the petition is supported by a copy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to the beneficiary by the petitioner in 2011. The Form W-2 reveals that the beneficiary was paid \$45,815.58 in 2011, which is less than the \$48,750 proffered wage.<sup>3</sup> The record also contains a copy of the 2011 Form 1120, U.S. Corporation Income Tax

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<sup>2</sup> See *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1<sup>st</sup> Cir. 2009); *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983); and *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011).

<sup>3</sup> Counsel states that USCIS should prorate the proffered wage for the portion of the year that occurred after the December 8, 2011, priority date. We will not, however, consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. While USCIS will prorate

Return, for Venevision Partners. However, this company's Federal Employer's Identification Number (FEIN) is different than the petitioner's FEIN as shown on the labor certification and on the Form W-2 issued to the beneficiary. Nothing in the governing regulation, 8 C.F.R. § 204.5, permits USCIS to consider the financial resources of individuals or entities who have no legal obligation to pay the wage. *See Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003).

Accordingly, after considering the totality of the circumstances, the petitioner has also failed to establish its continuing ability to pay the proffered wage to the beneficiary since the priority date.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income statements or pay stubs, the petitioner has not submitted such evidence.