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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, Rm. 3042
425 I Street, N.W.
Washington, DC 20536

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 29 2004

IN RE: Petitioner:
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:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked approval of the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a painter. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director revoked approval of the petition because he determined that the beneficiary had previously entered into a fraudulent marriage for the purpose of obtaining an immigration benefit.

On appeal, counsel submits a statement and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The petition was approved on July 20, 2000. On April 26, 2002, the Director, Vermont Service Center, issued a Notice of Intent to Revoke in this matter. In that notice, the director stated, "It has now come to the attention of (CIS) that the beneficiary previously entered into a marriage for the purpose of evading the immigration laws." The petitioner was accorded 30 days to respond to that finding of the director, though not informed of the evidence in support of the finding.

In response, counsel submitted photos of the wedding ceremony of the beneficiary and his ex-wife. Counsel also submitted three affidavits in support of the proposition that the beneficiary's marriage was not fraudulent.

An affidavit from the beneficiary details events leading up to his first marriage and its demise. An affidavit from the beneficiary's ex-sister-in-law attests to similar facts. A third affiant, apparently unrelated to the beneficiary by blood or marriage, stated that she introduced the beneficiary and his ex-wife, and that they lived with her for four months of their marriage. She described the nature of their lives together, which details are consistent with married life.

On August 30, 2002, the Director, Vermont Service Center revoked the petition. Neither the Notice of Intent to Revoke nor the Notice of Decision mentioned any evidence in support of the director's conclusion that the petitioner had entered into a sham marriage.

On appeal, counsel noted that no evidence had been cited for the director's conclusion and stated that the beneficiary's first marriage had been *bona fide*. Subsequently, counsel submitted an additional affidavit, purportedly from the beneficiary's ex-wife. That affidavit also details the breakup of the beneficiary's first marriage and implies that the marriage was *bona fide*.

The only evidence in support of the proposition that the beneficiary's first marriage was fraudulent is a letter, dated August 11, 1996, purportedly from the beneficiary's ex-wife. In that letter, the beneficiary's ex-wife stated that she would no longer support the beneficiary's spousal petition. The ex-wife stated that the marriage was *bona fide* on her part, but that the beneficiary left her "just after (they) got married," and concludes, therefore, that the beneficiary must have married her for an immigration benefit.

Because the spousal petition was abandoned, no decision was made on the merits of the spousal petition. As the record contains no evidence, other than that letter, to indicate that the marriage was a sham, the director must have revoked the petition on the strength of that letter. The appropriate inquiry is whether that letter is sufficient to demonstrate that the beneficiary's marriage was a sham.

The August 11, 1996 letter from the beneficiary's ex-wife stated that the beneficiary left her "just after" they married but does not mention a term of months or years.

The beneficiary's letter indicates his first marriage began on March 17, 1995. He states that he and his first wife split up and were reconciled on some occasions. He does not state when he and his ex-wife last lived together or when they were divorced, but states that he met his current wife in 1998, after his divorce.

The affidavit from the beneficiary's ex-sister-in-law concurs on the wedding date. That affidavit, dated May 4, 2002, states that the beneficiary and his ex-wife were divorced "around five years ago." That would apparently indicate that the divorce occurred during 1997, which is consistent with the beneficiary's version of events.

The third affiant states that the beneficiary and his ex-wife lived with her for approximately four months during 1995, but does not state when they finally separated or when they were divorced.

The affidavit from the petitioner's ex-wife, submitted on appeal, does not state when she and the beneficiary finally separated but states that she and the beneficiary were divorced on December 1, 1997.

The August 11, 1996 letter from the ex-wife states her conclusion that the beneficiary married her to obtain an immigration benefit. It states that she drew her conclusion from the beneficiary having left her shortly after they married. The determination that the beneficiary's marriage was a sham marriage may not be based on the ex-wife's conclusion, but the facts that led her to that conclusion may be considered.

The beneficiary did not apparently enter this country as the spouse or fiancée of a citizen. All of the evidence indicates that he and his future ex-wife met in the United States. If he did, in fact, abandon the marriage, as the ex-wife alleges in her letter of August 11, 1996 letter, he did not strengthen his chances of gaining an immigration benefit from it; in fact, he essentially destroyed it. The conclusion that the beneficiary entered into his first marriage to obtain an immigration benefit does not seem to follow from the facts.

Further, the affidavits of the beneficiary and his sister-in-law state that the beneficiary's ex-wife left him to return to New Jersey. This tends to contradict the ex-wife's version of events, that "(the beneficiary) deserted (her) just after (they) got married."

The position of the beneficiary's ex-wife in her letter of August 11, 1996, that the beneficiary married her in order to improve his immigration status, is more consistent with anger than with the facts of this case. No other evidence points to the conclusion that the marriage was a sham.

The petitioner has overcome the sole basis for the decision of revocation and no other basis for revocation appears in the record.

ORDER: The appeal is sustained.