



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: [REDACTED]

Date of this notice: 2/8 [REDACTED]

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:

Adkins-Blanch, Charles K.
Guendelsberger, John
Mann, Ana

Falls Church, Virginia 22041

File: [REDACTED] - Orlando, FL

Date: FEB - 8 [REDACTED]

In re: [REDACTED] Beneficiary of a visa petition filed by
[REDACTED] Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Gail S. Seeram, Esquire

ON BEHALF OF DHS: [REDACTED] s
Associate Regional Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa

The petitioner has appealed the October 21, [REDACTED] decision by the Field Office Director (Director) of the United States Citizenship and Immigration Services, Department of Homeland Security denying the visa petition submitted by the petitioner on behalf of her spouse. The Director, in denying the visa petition, found that the petitioner and beneficiary's marriage was entered into solely to obtain an immigration benefit. The Director concluded that, therefore, pursuant to section 204(c) of the Immigration and Nationality Act, 8 U.S.C. § 1154(c), the visa petition must be denied. The appeal will be sustained and the record will be remanded.

In visa petition proceedings, the petitioner has the burden of establishing eligibility for the benefits sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove the required elements by a preponderance of the evidence. *See Matter of Pazandeh*, 19 I&N Dec. 884 (BIA 1989). Visa petitions cannot be approved on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws, regardless whether any actual benefit was received. *See* section 204(c) of the Act. However, to be denied on this basis, there must be substantial and probative evidence of such an attempt or conspiracy. Evidence of the attempt or conspiracy must be contained in the alien's file. *See* 8 C.F.R. § 204.2(a)(1)(ii); *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990).

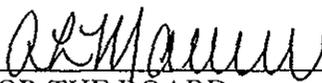
Where the bona fides of a marriage is challenged, the petitioner must present documentary or testimonial evidence to show that it was not entered into for the primary purpose of evading the immigration laws. *See Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975). Marriage fraud can be found with an admission by the former spouse that he colluded to evade the immigration laws. *See Ghaly v. INS*, 48 F.3d 1426 (7th Cir. 1995); *Salas-Velazquez v. INS*, 34 F.2d 705 (8th Cir. 1994). Marriage fraud can be found where the former spouse was paid to marry the beneficiary. *See Ghaly v. INS, supra*. Marriage fraud can also be found where the marriage was never consummated, where the spouses never cohabited, and where the spouses never held themselves out to family and friends as husband and wife. *See Matter of Phillis, supra*.

[REDACTED]

The Director found that the petitioner and beneficiary had engaged in marriage fraud based on "the lack of credible documentary evidence and testimony" (Dir. at 3). Upon de novo review, we do not agree that the record contains substantive and probative evidence of marriage fraud. Both the petitioner and beneficiary have presented evidence regarding their courtship and marriage which indicates their intent to enter into a bona fide marriage. There is no evidence in the record that the parties intended to enter into a sham marriage or that money changed hands. In her decision denying the petition, the Director did not give any weight to the fact that the petitioner and beneficiary have a child together who was born on April 22, 2005. They have submitted evidence of the commingling of assets and evidence that they lived together. In fact, the petitioner and beneficiary are currently maintaining "their marital residence" (Pet. Br. at 2). The petitioner has addressed the discrepancies that arose during the interview and has provided plausible explanations for them.

We conclude that the petitioner has submitted evidence to show that her marriage to the beneficiary is valid. The record does not contain substantial and probative evidence of prior marriage fraud to support a finding pursuant to section 204(c) of the Act. Thus, under the circumstances of this case, we will sustain the appeal, and remand the record to the Director to continue processing of the instant visa petition.

ORDER: The appeal is sustained and the record is remanded to the Director for further consideration of the visa petition consistent with the foregoing opinion.



FOR THE BOARD