FALSE STATEMENTS AS A BAR TO GOOD MORAL CHARACTER

by Lisa Seifert*

**Issue:** When does a false statement create a good moral character bar to eligibility for U.S. citizenship?

**Background:** The Immigration Act¹ and regulations² require but do not define moral character. It is, of course, the applicant’s burden to establish proof of good moral character. What must be shown? U.S. Citizenship and Immigration Services (USCIS) Interpretations state that good character is “measured by the standard of the community, but does not necessarily require the highest degree of moral excellence.”³

**SPECIFIC MANDATORY⁴ BARS TO GOOD MORAL CHARACTER**

Instead of defining what is required, the government has developed a list of bars to good moral character. Mandatory or per se bars to establishing good moral character for naturalization purposes, include, *but are not limited to:* habitual drunkard, criminals, illegal gamblers, those involved in prostitution or commercialized vice, alien smugglers, aliens previously removed, aggravated felons, participants in genocide or persecution, illegal voters, those who have made a false claim to U.S. citizenship, and *those who have given false testimony for the purpose of obtaining a benefit under the Immigration and Nationality Act (INA).*⁵

**QUESTION—WHAT IS FALSE TESTIMONY? WHEN DOES IT MATTER?**

*Example:* An alien’s willful or innocent lack of disclosure on an N-400 or other USCIS form, followed by sworn testimony that the contents are true becomes “false testimony under oath,” which is one way to be found to lack good moral character.⁶ In *Azziz,* the court upheld a denial of naturalization when applicant lied about residence on a previous I-751 application filed years before the application for citizenship. [This should bring chills to those attorneys who advise clients without knowing their history or having access to the previous immigration file.]

A false statement also could be an oral statement made at a naturalization interview, in response to an officer’s question. If USCIS denies the application for a false statement, this person can be barred for five years (or other statutory period).

**HOW LONG ARE FALSE STATEMENTS RELEVANT AS A POTENTIAL PROBLEM?**

Most inquiries for naturalization eligibility are limited to the five– or three-year period prior to application, but not good moral character.⁷

---

*Lisa E. Seifert* is the principal attorney of Seifert Law Offices, in Olympia, WA, focusing on family and removal cases. An active AILA member since 1991, Ms. Seifert helped start AILA’s Young Lawyers Division (now New Member Division). Ms. Seifert has served on numerous local and national AILA committees, and is currently the Washington State chapter chair. She is a graduate of the William Mitchell College of Law in St. Paul, MN.

¹ INA §§101(f) and 316(a)(3).
² 8 CFR §316.10(b)(2)(vi).
⁴ There are also discretionary grounds in 8 CFR§316.10(b)(3), including adultery, non-support of dependants, *et al.,* where the government may review extenuating circumstances to rebut a presumption of lack of eligibility. These are not discussed here. For more information, see M. Stock, “Advanced Issues in Naturalization—Practical Problems and Solutions,” *Immigration and Nationality Law Handbook* 607 (AILA 2008–09 Ed.) for a discussion of additional bars to eligibility.
⁵ See INA §§101(f)(6) and 316.10(b)(2)(vi).
⁷ INA §316(e); *U.S. v. Hovsepian,* 359 F.3d 1144, 1166–67 (9th Cir. 2004) (*en banc*). (N.B. *Hovsepian* is a very important case discussing an alien’s ability to get mandamus review of a citizenship application in a U.S. district court when the immigration service fails to take action within 120 days of the interview, pursuant to INA §336(b)).
ANY FALSE STATEMENT?

The U.S. Supreme Court held in *Kungys v. United States*\(^8\) that in order to be a false statement under this section, a statement must be made with the subjective intent to secure an immigration benefit. At least the Fifth Circuit U.S. Court of Appeals has found that the false testimony must also be material to the application or inquiry in order to deny a benefit, in this case cancellation of removal.\(^9\) Mr. Gonzalez had used his attorney’s address in California instead of his own address in New Mexico. The Fifth Circuit disagreed with the Board of Immigration Appeals that this type of representation makes no difference, and held that such statements do not constitute false testimony.

**Remedy:** Thoroughly review statements made to USCIS on the N-400 and in all previous applications to USCIS. A pre-application Freedom of Information Act or FOIA request may take four to six months or more. This is *not* time wasted when discovery of a previous inconsistent or false statement could save an alien hundreds of dollars in fees, and perhaps avoid a finding that leads to removal proceedings. Current processing times for FOIA applications are much improved in 2010 as compared to years past.

---


\(^9\) *Gonzalez-Maldonado v. Gonzalez*, 487 F.3d 975, 977 (5th Cir. 2007).
“DID GEORGE REALLY SLEEP WITH MARTHA?:
SOME PRACTICAL POINTERS IN DEFENDING AGAINST MARRIAGE FRAUD

by Steven Thal, Rosie Cho, Melanie Corrin & Michelle Rodriguez*

If the marriage of George and Martha Washington were subjected to the scrutiny of the modern day U.S. Department of Homeland Security (DHS), would it pass muster? This article will explore issues commonly confronted today as couples seek approval of their I-130 relative visa petition.

To provide a historic perspective, we’ll weave in some tidbits from history as we also explore how the marriage of George and Martha Washington would have fared under the examination of the United States Citizenship and Immigration Services (USCIS).

WHAT KIND OF EVIDENCE CAN BE SUBMITTED WHEN THE NEWLY MARRIED COUPLE LACKS TRADITIONAL EVIDENCE OF A GOOD FAITH MARRIAGE?

While the speed at which the USCIS is processing one-step applications for adjustment and scheduling interviews is a welcome development, it can make it more difficult to develop the evidence necessary to demonstrate a bona fide marriage. Frequently, the interview is scheduled even before the foreign spouse has received work authorization which can prevent married couples from comingling assets and purchasing property, the kind of evidence that USCIS likes best.

Where such primary evidence is unavailable, immigration counsel must assist the couple to creatively document their relationship. Even George and Martha Washington would have faced a similar issue. Martha was a widow at age 27 when she married George. She was of the upper class and was the richest widow in Virginia. George on the other hand was in debt having purchased thousands of dollars worth of farm equipment and furnishings for Mount Vernon. There was a large disparity between their respective estates.

Following is a sample list of documents to prove a bona fide marriage where traditional evidence is unavailable:

- Mail jointly addressed to the couple, or separately to each spouse to demonstrate the same residence (bills, solicitations, magazines);
- Joint membership in organizations (museum membership, AAA, gym membership);

---

* Steven C. Thal practices immigration law in Minnetonka, Minnesota. He is a 1982 graduate of the University of Minnesota Law School. Prior to law school he spent two years in the Peace Corps in Ecuador. Mr. Thal is AV-rated by Martindale-Hubbell and is listed in their Directory of Preeminent Lawyers. Minneapolis-St. Paul Magazine and Twin Cities Business Monthly have also recognized Mr. Thal as a “Super Lawyer” in immigration law. He has received an AILA Presidential Commendation for creative and tireless advocacy on behalf of immigrants, and is an emeritus Trustee of the American Immigration Council.

Rosy H. Cho is a graduate of the University of California, Berkeley Law School (Boalt Hall) and practices immigration law in San Francisco. Ms. Cho has helped coordinate the volunteer legal response to ICE raids conducted in the northern California area.

Melanie K. Corrin focuses on family-based immigration and representation of foreign nationals in detention and removal proceedings. She graduated from New England School of Law (2002), where she was a senior editor of the New England Journal of International & Comparative Law, and completed her undergraduate work at the University of Central Florida. Ms. Corrin is admitted to the Colorado State Bar and the Tenth Circuit Court of Appeals. She has served on the AILA Colorado chapter executive committee for two years.

Michelle Saenz-Rodriguez began her immigration career as a judicial law clerk under the attorney general’s honor program. She served as law clerk for seven immigration judges in Harlingen, Texas and then moved to Dallas, where she and her husband George Rodriguez established Saenz-Rodriguez & Associates, PC. Their practice revolves around family-based immigration and complex litigation in the deportation/removal field. Ms. Saenz-Rodriguez is an adjunct professor at Baylor Law School in Waco, Texas. She has been very involved with the Texas AILA chapter, serving in liaison positions for the Dallas district office.

Copyright © 2010 American Immigration Lawyers Association
- Cell phone bills listing frequent calls and texts between the couple;
- Mail and email correspondence between couple before and after marriage;
- Other correspondence received by friends and family referencing the relationship;
- Affidavits from family members (especially of petitioner) and friends (include copy of ID and contact information of affiant);
- School or medical records listing spouse as emergency contact;
- Evidence of travel together: itineraries, tickets, boarding passes, hotel reservations, photos;
- Photos of marriage ceremony, trips, social outings with friends and family;
- Bills related to marriage ceremony or honeymoon;
- Documentation of a spouse’s debts, bankruptcy (to explain lack of commingling of assets); and a
- Prenuptial agreement.

There is no magic formula to determine what and how much evidence is necessary to prove a bona fide marriage. Some interviewing officers are not much interested in documentation and instead rely on questioning—usually about how the couple met and how the relationship developed—to reach a judgment about the marriage. Therefore, preparing your clients to discuss their relationship and to address any nontraditional matters with the officer is critical.

**Practice Pointer:** Have clients wear their rings and bring their cell phones with the other spouse’s numbers on fast dial and the keys to their home. Encourage the couple to act naturally and affectionately. They should also bring the originals of all the submitted evidence. Also have them bring any wedding albums or scrapbooks to show the officer.

**HOW DOES USCIS INTERPRET “FRAUDULENT AT INCEPTION?”**

A fraudulent or sham marriage is one in which one or both of the parties enter into the marriage primarily for the purpose of obtaining the resident status of the foreign spouse. While one of the motivations for getting married can be a desire for an immigration benefit, it can not be the sole or primary reason. The relevant inquiry is whether the parties intended, *at the time of the marriage*, to establish a life together. Therefore, it is inappropriate for USCIS to determine the strength of the marriage at the time of the interview.

Even where the couple is no longer living together, the courts have found that the viability of the marriage is not the appropriate test, and separation alone is not a basis for denial. Even George and Martha were separated for long periods of time. When George was commander of the continental army there was a long period of separation between June 1776, and March 1777, when Martha joined George at Morristown, NJ where the army was encamped for the winter. Later another prolonged separation occurred over the brutal winter of 1777–78 when George Washington and the troops camped at Valley Forge. While George could have returned to Mount Vernon, he feared that if he did so, the troops would desert.

**Red Flags According to the Adjudicator’s Field Manual**

Unconventional or nontraditional marriages will typically raise the suspicion of the USCIS officer. The USCIS Adjudicator’s Field Manual¹ lists ten red flags that the officer should look for:

- Large disparity of age;
- Inability of petitioner and beneficiary to speak each other’s language;
- Vast difference in cultural and ethnic backgrounds;
- Family and/or friends unaware of the marriage;
- Marriage arranged by a third party;

1. *Available at [http://www.ailapubs.org/adjudicators.html](http://www.ailapubs.org/adjudicators.html).*
Marriage contracted immediately following the beneficiary’s apprehension or receipt of notification to depart the United States;
- Discrepancies in answers to questions of which a husband and wife should have common knowledge;
- No cohabitation since marriage;
- Beneficiary is a friend of the family; and
- Petitioner has filed previous petitions on behalf of aliens, especially prior foreign spouses.
  
  Additional factors not listed above that may also raise red flags are:
- Vast discrepancy in economic or educational background;
- Conflicting work schedules leaving little or no time spent together;
- Interracial marriages;
- Short courtship; and
- Beneficiary is from a “high fraud” country.

Where any of these factors exist, counsel not only should try to provide extensive documentation of the bona fides of the relationship but also prepare the couple to directly address the issue. For example, officers are often reluctant to directly ask about a large age difference. In such a case, prepare the couple to address the age gap when they are asked about how they met and how the relationship developed including any reluctance or problems encountered because of the age difference. In the case of an arranged marriage, prepare the couple to discuss their cultural background that might accept arranged marriages as a norm. Even where documentation is not abundant, often an officer’s suspicions can be overcome if you prepare your clients to frankly address the difficult questions about their marriage.

Preparing Clients for a Marriage Fraud Interview

When your clients are called back for a second interview, it is highly likely that your clients will undergo a marriage fraud interview. It is critical that you prepare your clients thoroughly before the interview. First and most importantly, explain what your clients can expect at the interview—e.g., videotaping of interview, separate interviews, and the nature of the questioning. Just knowing what to expect can go a long way to a successful outcome.

Before any interview, besides going over the typical interview questions, counsel should advise the couple to:
- Answer all questions truthfully (“I don’t know” or “I don’t remember” is better than guessing or fabricating an answer);
- Pay special attention to activities and events the weekend and days before the interview as details of such activities may be a focus of the questioning; and
- Refrain from talking about or providing details beyond what is asked.

Avoid pretending the marriage is perfect (issues of contention between a couple can sometimes be more persuasive of a good faith marriage). If bona fide documents have not previously been submitted, make sure to bring these to the interview. Sometimes, an officer may choose to approve the petition without conducting separate interviews after reviewing the documentation. Even if bona fide documents were previously submitted, additional documents may be submitted at the marriage interview.

CHALLENGING A MARRIAGE FRAUD CHARGE IN A SUBSEQUENT PETITION

Many times you will encounter a client who is filing a marriage-based petition where they have been married before, but the marriage did not work out. Additionally, the client had previously filed an I-130 that may have either been denied or withdrawn after the termination of the marriage. Now, a few years later or maybe even a few months later, a new petition is being filed by a new spouse.

How do you deal with the allegation of marriage fraud (from the initial marriage) while filing a subsequent petition?
Proving the Bona Fides of the First Marriage

It is important to make sure that you are able to provide evidentiary proof of the validity of the first marriage. Examples of such proof might be: rent receipts, joint accounts, joint income tax filings, joint assets, etc. Less obvious examples might be: greeting cards, emails, and texts showing constant communication between a previously married couple, posts on social networking sites such as Facebook, Twitter, or My Space.

Distinguishing a Fraudulent Marriage from a Nonviable One

Remember, there is a huge legal difference between “fraudulent or sham marriage” and a “nonviable one.” Denial is not appropriate where parties entered into a valid marriage, but are no longer living together. Just because a marriage did not last for a long time does not mean that the marriage was a fraud. Many times allegations of marriage fraud arise simply as a result of a short term marriage.

The courts have determined that there are many factors that have to be taken into consideration when deciding whether a marriage was “entered into for purposes of circumventing the immigration laws.” It is in those cases that the practitioner should advise their client up front to be proactive and provide bona fides of the earlier marriage.

CHALLENGING A MARRIAGE FRAUD CHARGE IN IMMIGRATION COURT

The issue of “sham marriage” can arise in removal proceedings in several different ways:

- As a result of the denial of an I-751 petition to remove conditions;
- As a result of a previously filed petition that was either withdrawn or terminated; or,
- As a result of an automatic termination of conditional resident status where no petition was filed after the expiration date of the original Conditional Residence (CR) status.

The issue becomes how one should deal with an allegation of marriage fraud once one is placed in proceedings. First of all, make sure you fully understand the immigration laws relating to sham marriages. The Immigration Marriage Fraud Amendments Act of 1986 dramatically changed the application of the law in relation to spouses. Based on these amendments to the Immigration and Nationality Act (INA), the term “conditional residence” became part of the law. Basically it states that all marriages of less than two years will result in the grant of “conditional residency” status for a period of two years. This means that on the date that the adjustment of status is granted, the marriage must have been entered into more than two years prior to the adjustment or the conditional resident status will be granted.

There is a requirement to file a petition, (I-751) 90 days prior to the termination of the two-year anniversary in order to remove the conditions and become a legal permanent resident. It is critical to file the petition or risk termination of the CR status even if married to the original petitioner after the expiration of the two-year period. The petition must be jointly filed by both the original petitioner as well as the original beneficiaries.

So How Do You Fight a Fraud Charge in Court?

If the I-751 is initially denied at the administrative level, the application is entitled to a review of the determination by the Immigration Judge (IJ).

- The burden of proof is on the government to show by a preponderance of the evidence, that the facts and the information are not true with respect to the qualifying marriage. In other words, the government has to prove “sham marriage.”

---

3 Public Law 99-639, 100 Stat. 3537.
5 INA §216.
6 See INA §216(c)(3)(D).
Make sure to adequately document the validity of the marriage. Be prepared to present a lot of evidence including live testimony from friends and family.

Deal with any inconsistencies that occurred during the interview process.

Review §204(c)(2) of the INA on “fraudulent marriage.” Just because a marriage is no longer viable does not mean that it was not valid at inception. The main question remains whether the marriage was indeed “bona fide” when the couple entered into the marriage and that the marriage was not entered into for the purpose of circumventing immigration laws.

When the Conditional Status is Terminated as a Matter of Law

Make sure that the status was properly terminated.

Ask for the opportunity to file an I-751 petition (possibly with a request for waiver of the joint filing requirement) at the administrative level prior to review by the IJ. Waivers may be filed before or after the 90-day period

Remember, if the applicant does not petition USCIS first, the IJ cannot review or take the first look at the waiver.

The applicant has the burden of proof in cases where the applicant failed to file or failed to appear as required by the statute resulting in the termination of status.

Velarde Hearings

_Matter of Velarde-Pacheco_ deals with granting of a motion to reopen for adjustment of status based on a marriage entered into after the commencement of proceedings. Under the _Velarde_ standard, a motion to reopen in order for an adjustment based on marriage may be granted if the following five factors are met:

- Timely filed motion
- No numerical bar
- No bar under _Matter of Shaar_ or any other procedural ground;
- Clear and convincing evidence of strong likelihood of a bona fide marriage; and
- Service does not oppose the motion or opposes based solely on _Matter of Arthur_.

Many immigration courts nationwide hold _Velarde_ hearings to determine if the five relevant factors are met. Once the Government and the IJ are satisfied that the requirements have been met, the case is usually continued for the purposes of adjudication of the I-130 petition (USCIS has exclusive jurisdiction) followed by an adjustment hearing once the I-130 approval has been issued by the USCIS.

If you are in a jurisdiction that does not typically hold _Velarde_ hearings, it might be a good idea to request one for the record. You never know when the court might be willing to entertain a new process for the efficiency of a case and to avoid a remand later in the process.

Anytime allegations of marriage fraud arise in immigration court, it is important to take a very proactive approach because any finding of marriage fraud proves fatal in most cases.

STRATEGIES IN RESPONDING TO NOID’S ALLEGING MARRIAGE FRAUD

Often times a client will come to see an attorney after they have filed an I-130, Immigrant Petition for Alien Relative, have been interviewed, and have then received a Notice of Intent to Deny (NOID) the petition alleging marriage fraud. What happens when you receive a NOID alleging fraud, how do you respond to

---

8 _Matter of Shaar_, 21 I&N Dec. 541 (BIA 1996) (regarding motions to reopen for additional relief during the pendency of a grant of voluntary departure whereby the alien continues to stay after the departure period has expired).
9 _Matter of Arthur_, 20 I&N Dec. 475 (BIA 1992) (questioning the bona fides of the marriage and whether it was entered into for the sole purpose of immigration).
these charges? The USCIS has various indicators it uses to base an allegation of marriage fraud, and knowing these and overcoming them in your response is the key to responding to the NOID.

USCIS has already reviewed the evidence submitted prior to and at the interview, and takes everything into consideration. The information below is from a USCIS Fraud Referral Sheet that lists I-130 Fraud Flags the government (including U.S. Immigration & Customs Enforcement (ICE)) looks at.¹⁰

- Low economic status/employment of the petitioner;
- Large age differences between the petitioner and beneficiary;
- Unusual or close family relations;
- Whether the family is aware of the marriage;
- Short time between entry and marriage;
- Unusual cultural differences;
- Unusual marriage history, including former marriages to foreign nationals;
- Children born during the marriage to another parent, unusual numbers of children, and a large discrepancy in ages;
- Dates on submitted documents that do not properly coincide;
- Close divorce/marriage dates;
- Preparer, notary, and minister are the same person; and
- Same employer of petitioner and beneficiary.

The adjudicating officer also looks to additional factors that in his or her discretion show that the marriage is fraudulent. USCIS has stated that it looks at multi-media outlets like Facebook and MySpace to determine whether the couples are “friends” or on each other’s pages, or if it indicates the user is married and to whom. Build your client’s response based on these factors, as they are what USCIS looks to when reviewing the petition and issuing the NOID. The best way to overcome the allegation of fraud is overwhelming physical evidence that your clients do, in fact, have a common life and a shared residence. This builds the record if an appeal becomes necessary.

Obviously, primary evidence such as lease agreements, joint mortgage statements, joint bills, joint bank accounts, joint credit cards, joint income tax returns, and photos of your couple together and with family and friends, if they have not been submitted already. Additionally, statements from the couple detailing their “roadmap” or how they met, when they started dating, and why they decided to be married can be very persuasive. Have each person write their own “roadmap”, and not allow the other to see it until it is completely finalized, as often times they will write the same thing rather than using their own words.

**WHEN THE I-130 IS DENIED, DO I APPEAL OR RE-FILE?**

If a denial occurs, the question becomes whether to re-file or to appeal. This is a decision that is up to your client after fully weighing the pros and cons with you. If your evidence of bona fides were minimal, it may be best to take some time to rebuild your case and re-file when you have more evidence. However, if your evidence was strong, and your client does not mind the 18-month processing times at the Board of Immigration Appeals (BIA), and is willing to pay the filing fee, then an appeal is the best way. Additionally, if your client has been placed in removal proceedings, refiling may be a better avenue, as appeals at the BIA can take an extremely long time.

When an individual is in removal proceedings, the I-130 must be filed at the lockbox, to be forwarded to a service center for adjudication. The petition will then generally be forwarded to the petitioner’s local USCIS District Office for interview and adjudication. Depending on your district, this generally happens faster than a BIA appeal, and therefore may benefit your client and the court’s docket. However, your client will have to

---

¹⁰ USCIS Fraud Referral Sheet, *published on AILA InfoNet at Doc. No. 10012861 (posted Jan. 28, 2010).*

Copyright © 2010 American Immigration Lawyers Association
pay for the I-130 filing fee and they will need to have much stronger evidence then what would have been presented to USCIS if the client was not in proceedings.

No matter what the decision is, the best way to approach it is in an open manner with your client so they fully understand the pitfalls and benefits to each option in order to best make a decision about their case. As a matter of practice, we write a letter discussing their options and then a follow-up confirming their decision.

**WHAT ARE THE CRIMINAL CONSEQUENCES OF MARRIAGE FRAUD?**

Under §1325(c) of 8 United States Code (USC), in a subsection titled “Marriage Fraud,” it states that “Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.”

Other proscriptions against criminal conduct are found at 18 USC §1546(a), which, among other provisions, makes it a crime to give a false statement under oath in any document required by the immigration laws or regulations. Section 1546(a) punishes anyone who knowingly subscribes as true any false statement with respect to a material fact in any documentation required by immigration laws. As a result, sham marriage participants violate §1546(a) by claiming they are engaged in a bona fide marital union when in fact their marriage was meant only to obtain an immigration benefit for the alien spouse. In that situation, the couple’s assertion that their marriage is bona fide is a material fact that is knowingly misrepresented to the government. Finally, under some circumstances, sham marriage participants convicted for false representation under §1546(a) may also be convicted under other related statutes.

False representation may also constitute perjury under 18 USC §1621 and may be enough for a conviction of making false statements to government officers under §1001. Beyond §1546, there are many statutes that sham marriage participants may be prosecuted under.

**WHAT ARE THE CIVIL CONSEQUENCES OF MARRIAGE FRAUD?**

If USCIS determines that the marriage was entered into to evade immigration laws, INA §204(c) bars the approval of any subsequent petitions filed on the immigrant’s behalf. That includes visa petitions by employers, future spouses, and other relatives. There is no waiver available if there is a finding of INA §204(c) marriage fraud.

Additionally, even if the USCIS had previously granted conditional residency status based on marriage, but subsequently determines that the marriage was entered into solely to obtain an immigration benefit, USCIS will terminate the foreign national’s conditional residency and place the individual in removal proceedings.

**WHAT CAN BE DISCLOSED OR DISCOVERED REGARDING THE CRIMINAL BACKGROUND OF A PETITIONER?**

Within the Violence Against Women Act (VAWA) are two provisions which may affect disclosure of certain criminal records of petitioners under the “Protection of Battered and Trafficked Immigrants,” (PBTI) and the “International Marriage Broker Regulation” (IMBRA).

---

11 See 8 USC §1325(c).
12 See 18 USC §1546(a).
13 See 18 USC §§1001, 1621.
Additionally, the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act),\(^{16}\) bars petitioners convicted of certain specified crimes against a minor from petitioning for family members and prohibits a U.S. citizen or lawful permanent resident petitioner convicted of a “specified offense against a minor” from filing any family-based immigration petition for any beneficiary—regardless of age—such as a fiancé(e), spouse, minor children, unmarried son or daughter, and parent unless USCIS determines that the petitioner poses no risk to the beneficiary.

A USCIS memorandum\(^{17}\) by Acting Deputy Director Robert C. Divine, dated May 3, 2006, provided interim guidance to USCIS adjudicators regarding when it may be appropriate to disclose certain information relating to a visa petitioner’s criminal history involving violence or sex offenses to potential visa beneficiaries or their legal guardians.

Additional guidance was issued on July 21, 2006, by Michael Aytes from USCIS headquarters regarding disclosures and investigations under the PBTI and IMBRA provisions.\(^{18}\) According to this Memo, IMBRA provides that a petitioner for a K nonimmigrant visa for an alien fiancé(e) (K-1) or alien spouse (K-3) must submit with his or her Form I-129F information on any criminal convictions of the petitioner for any of the following “specified crimes:”

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, and stalking.
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of these crimes.
- Crimes relating to a controlled substance or alcohol where the petitioner has been convicted on at least three occasions and where such crimes did not arise from a single act.

Finally, practitioners must consider the provisions of the Adam Walsh Act. Under this Act, the petitioner, who has committed a “specified offense against a minor” is prohibited from filing on behalf of any family-based beneficiary under §§204(a)(1)(A)(i) and 204(a)(1)(B)(i) of the INA or §101(a)(15)(K) of the INA. “Any beneficiary” includes a spouse, a fiancé(e), a parent, an unmarried child, an unmarried son or daughter over 21 years of age, an orphan, a married son or daughter, a brother or sister, and any derivative beneficiary permitted to apply for an immigrant visa on the basis of his or her relationship to the principal beneficiary of a family-based petition.

The term “specified offense against a minor” means an offense against a minor (defined as an individual who has not attained the age of 18 years) that involves any of the following:

- An offense (unless committed by a parent or guardian) involving kidnapping;
- An offense (unless committed by a parent or guardian) involving false imprisonment;
- Solicitation to engage in sexual conduct;
- Use in a sexual performance;
- Solicitation to practice prostitution;
- Video voyeurism as described in §1801 of Title 18, United States Code;
- Possession, production, or distribution of child pornography;
- Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct; or
- Any conduct that by its nature is a sex offense against a minor.


Practice Pointer: Practitioners should always ask the petitioner whether they have any criminal convictions (of any type) in their background. They should be told that their fingerprints may be taken and USCIS may request a background security check through the FBI. One should also discuss the ramifications of IMBRA and the Adam Walsh Act with the petitioner and the beneficiary prior to filing.
DON’T WAIVE GOODBYE—WAIVERS IN FAMILY CASES

by Gloria Goldman, Rolando Rex Velasquez, Raul E. Godinez, & Lourdes Santos Tancinco*

We all have family relations. Sometimes we cannot stop talking about the accomplishments of certain members of our family, and at the same time there are occasions when we avoid talking about other family members. This article focuses on the “other family members.” These are the ones who have had past indiscretions and trouble. It also addresses the issues of family members with medical problems, and how these would affect the final processing for lawful permanent residence.

For obvious reasons, clients often do not share the entire story. What many of us have learned during our years of experience in immigration law is that we must ask detailed questions about a person’s past. We cannot assume anything regarding a client. People tend to forget or misinterpret facts about their history.

We must interrogate, cross examine, and then double-check the information provided by the clients in order to ensure that we know about past crimes or indiscretions.

This article provides guidance when a family-based case might come to a halt because the beneficiary is inadmissible due to health, criminal, or fraud-related issues. In the immigration law practice, it is important to recognize the potential hazards at the inception of the case, and, if necessary, be prepared to file the necessary waiver application or applications.

Although we use Form I-601 for various grounds of inadmissibility, the supporting documents and analysis will depend on the case. The preparation of the I-601 waiver packet will vary from case to case and will depend on the requirements set out by the regulations.

INA §212(G)—MEDICAL WAIVER FOR HEALTH RELATED GROUNDS

Applicants for admission into the United States may be denied for health-related reasons under INA §212(a)(1)(A). These reasons include: (1) having a communicable disease of public health significance; (2) failure to obtain certain vaccinations; (3) having a physical or mental disorder that may pose a threat to person or property; and (4) being a drug user or addict. There exists a waiver under INA §212(g) for applicants who would otherwise be excluded because of their health-related issues. The waiver only applies to those who fall within the first three categories listed above. There is no waiver for controlled substance addiction or drug use.

There is a comprehensive U.S. Department of Homeland Security (DHS) memo that includes guidance regarding waivers for medical grounds of inadmissibility.1

* Gloria A. Goldman has practiced immigration and nationality law in Tucson since 1991. She practices with her son, Maurice (Mo) Goldman, at the Goldman & Goldman firm. Ms. Goldman represents clients in the areas of business immigration, family immigration, citizenship, as well as complicated deportation matters. She currently serves on the AILA Board of Governors.

Rolando Rex Velasquez is a former legacy INS trial attorney, now in private practice in Las Vegas. Mr. Velasquez taught immigration law as an adjunct professor at the University of Buffalo, School of Law. He holds a J.D. and a master’s degree in business administration, and is a first-generation son of immigrants. Mr. Velasquez speaks often about immigration issues at public forums and events.

Raul E. Godinez established and successfully manages the Law Office of Raul E. Godinez, a Los Angeles firm that specializes in removal defense. He practices before the immigration courts, the Board of Immigration Appeals, district courts, and U.S. Ninth Circuit Court of Appeals. He was counsel in the published decisions Juarez v. Ashcroft and Mejia v. Gonzales, and was recognized by AILA with the Joseph Minsky Award. Mr. Godinez is a past chair of AILA’s Southern California chapter. He received his J.D. from the University of San Diego and his undergraduate degree from the University of California at Berkeley.

Lourdes Santos Tancinco is a partner at Tancinco Law Offices, APC, a San Francisco-based law firm providing expertise in the field of immigration law. Ms. Tancinco has practiced immigration law for over 16 years, and has spoken at various immigration law workshops conducted by local community-based organizations. She is chair of the Veterans Equity Center, a non-profit organization established to provide a clearinghouse for Filipino World War II veterans issues. She authors weekly immigration columns published in Philippine News, Philippines Today, and Philippine Daily Inquirer.
COMMUNICABLE DISEASES

An applicant having a “communicable disease of public health significance” who has been found to be inadmissible is eligible to file for a waiver pursuant to INA §212(g). Determination of whether an applicant has a communicable disease that would prevent admission is done according to the regulations given by the Secretary of Health and Human Services. Prior to July 30, 2008, the Immigration and Nationality Act (INA) included “infection with the etiologic agent for acquired immune deficiency syndrome” also known as HIV. However, this part of INA §212(a)(1)(A)(i) was amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS Tuberculosis And Malaria Reauthorization Act of 2008. Communicable diseases of public health significance are defined in 42 CFR §34.2(b).

Inadmissibility of those who would otherwise be ineligible for admission because of a communicable disease may be waived under INA §212(g)(1)(A) if the applicant is the spouse or unmarried son or daughter, or the minor unmarried adopted child of a United States citizen (USC), Lawful Permanent Resident (LPR), or of a nonimmigrant lawfully admitted for permanent residence, or of a nonimmigrant who has been issued an immigrant visa. The waiver also applies to those who have a son or daughter who is a USC, or who is a noncitizen lawfully admitted for permanent resident, or is a noncitizen who has been issued an immigrant visa. Violence Against Women Act (VAWA) self-petitioners are also eligible for a §212(g) waiver.

IMMUNIZATIONS

An applicant who seeks admission into the United States or adjustment of status will be denied if he or she fails to submit documentation that he or she has received vaccinations against certain preventable diseases. These include, but are not limited to: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccine preventable diseases recommended by the Advisory Committee for Immunization Practices. Applicants who fall into this category of inadmissibility may qualify for a waiver under §212(g) if: (1) the applicant receives the needed vaccination; (2) a civil surgeon, medical officer, or panel physician certifies that a vaccination would not be medically appropriate; or (3) the requirement of such a vaccination would be contrary to the applicant’s religious beliefs or moral convictions.

If an applicant seeks to waive the vaccine requirement because the vaccination would be against his or her religious beliefs or moral convictions, the applicant should, in addition to filing Form I-601, file additional evidence. This evidence should establish that: (1) he or she is opposed to vaccinations in any form; (2) the objection is based on religious belief or moral conviction; and (3) the belief or conviction is sincere.

The waiver is also available if the surgeon general certifies that it is not medically appropriate for the applicant to receive one or more of the required vaccinations. There are four scenarios where the waiver might be found. These are: (1) the vaccination is not recommended by the Advisory Committee for Immunization Practices for the nonimmigrant’s specific age group; (2) the vaccine medically contradicted; (3) insufficient time interval because the nonimmigrant has taken the first vaccine, but is unable to complete the series within a reasonable period of times; and (4) the medical exam is not being performed during the flu season.

---

2 INA §212(a)(1)(A)(i).
3 110 P.L. 293 §305.
4 INA §212(g)(1)(B).
5 INA §212(g)(1)(C).
6 INA §212(a)(1)(A)(ii).
7 INA §212(g)(2).
MENTAL HEALTH

Applicants with certain mental health concerns are inadmissible. A family relationship is not required. An applicant who has a physical or mental disorder and behavior that may pose or has posed a threat to the property, safety, or welfare of the applicant or others is eligible to apply for the waiver. Even if the applicant does not currently suffer from such a disorder and behavior, if the applicant had such a disorder and behavior in the past, and the behavior is likely to recur or lead to other harmful behavior, the applicant is still inadmissible. Determination of what disorders and behaviors fall within this category is done in accordance with the regulations given by the secretary of Health and Human Services, in consultation with the attorney general.\(^\text{10}\) Applicants who fall into this category also may qualify for a §212(g) waiver under the discretion of the attorney general.\(^\text{11}\)

DRUG ABUSER

Anyone determined to be a drug abuser or addict is inadmissible. Determination of whether an applicant is a drug abuser or addict is done according to the regulations given by the secretary of Health and Human Services alone.\(^\text{12}\) If an applicant is determined to be a drug user or addict, he or she cannot use a §212(g) waiver. Because there is no requirement for a conviction for this ground of inadmissibility, the practitioner must be careful regarding what the civil surgeon reveals in the medical exam. Therefore, it is important that the client is truthful about drug use during the three years prior to applying for permanent residency.

APPLICATION PROCEDURE

To apply for a §212(g) waiver, the applicant must file Form I-601, Application for Grounds of Inadmissibility, and any applicable documentation. The fee for the application is $545, but this fee is waived for those with tuberculosis, mental retardation, or those with a history of mental illness. If the applicant is applying for the waiver outside the United States, he or she must file the application with the American embassy or consulate where the applicant is filing for the visa. If applying inside the United States for lawful permanent residence, the applicant files the application with the National Benefits Center—if the file is at the U.S. Citizenship and Immigration Services district office, file within the jurisdiction of the applicant’s place of residence. If the applicant is incompetent to file, a qualified family member may file on behalf of the applicant.

If applying for a waiver based on a mental disorder, additional evidence should be submitted with Form I-601. This evidence includes, but is not limited to, a complete medical history and report that states: (1) whether the mental or physical disorder and behavior poses a threat to the property, safety, or welfare of the applicant or other individuals; (2) details of any hospitalization, institutional care, or other treatment relating to the disorder; (3) findings regarding the applicant’s current physical condition, including any pertinent tests or x-rays; (4) a detailed prognosis specifying, to a reasonable degree of certainty, the possibility that the harmful behavior is likely to recur or other harmful behavior associated with the disorder is likely to occur; and (5) a recommendation concerning reasonably available treatment in the United States that can reasonably be expected to reduce the likelihood that the physical or mental disorder will result in future harmful behavior.

INA §212(H) FOR CERTAIN CRIMES

Often, clients will not disclose crimes because of the faulty reasoning regarding what, in fact, is a conviction for immigration purposes. Because they were told by a criminal defense attorney that an expungement “cleaned up” their record, they might forget to provide this information. Many believe that because they never went to jail or were not handcuffed, they have no arrests or convictions. The excuses are endless, but the consequences are real. Therefore, it is our duty as attorneys to make sure the client tells us everything so that we can make the final analysis. It is a real possibility that the result of a less than truthful client is the necessity for a second waiver for misrepresentation (the failure to disclose the crime.)

\[^{10}\] INA §212(a)(1)(A)(iii).
\[^{11}\] INA §212(g)(3).
\[^{12}\] INA §212(a)(1)(A)(iv).
Applicants with certain criminal backgrounds may apply for a waiver under INA §212(h) in certain circumstances. A waiver exists under INA §212(h) for certain criminal grounds of inadmissibility listed in INA §212(a)(2). The §212(h) waiver applies to several types of situations, and includes waivers for: (1) conviction of a crime involving moral turpitude (CIMT); (2) violation of a law or regulation relating to a controlled substance, but only as it relates to a single offense of a simple possession of 30 grams or less of marijuana; (3) multiple criminal convictions for which the aggregate sentence of confinement was at least five years; (4) involvement in prostitution or commercialized vice; and (5) those who committed a serious criminal offense, exercised immunity from criminal jurisdiction, and departed from the United States.

No court has jurisdiction to review a grant or denial of a §212(h) waiver. However, courts do have jurisdiction to determine if the crime requires a waiver.

As the advocates, it is our responsibility to determine if the waiver is, in fact, necessary. Is the conviction for a crime involving CIMT? Does the CIMT fall under the petty offense exception, and, therefore, a waiver is not necessary?

In the U.S. Ninth Circuit Court of Appeals, a conviction of simple possession may not need a waiver under the Federal First Offender Act. A first-time, simple drug possession charge, if expunged, may not be used as convictions under the INA. However, the Ninth Circuit recently affirmed a denial of LPR status where the nonimmigrant’s prior state conviction was expunged, but he had violated a condition of his probation.

There are three ways for an applicant to qualify for a waiver under this section. Under the first option, the applicant must show:

- The activities for which the nonimmigrant is inadmissible occurred more than 15 years from the date of the application for visa, admission, or adjustment of status;
- Admission would not be contrary to the national welfare, safety, or security; and
- He or she is rehabilitated.

Under the second option, the applicant must show that an immediate USC or LPR family member would suffer extreme hardship if he or she is denied admission into the United States. This includes parents, spouse, son, or daughter. It should be noted that this group of qualifying relatives is broader than what is acceptable for waivers of misrepresentation or fraud, which is discussed later.

Under the third option, an applicant may qualify if he or she is a VAWA self-petitioner, and is not required to demonstrate hardship to a qualifying relative.

Even if the applicant meets the statutory requirement of “extreme hardship,” the attorney general (AG) can deny the application based on discretionary grounds. The AG requires a heightened showing of hardship for nonimmigrants convicted of dangerous or violent crimes. Generally, the AG will not exercise favorable discretion in cases that involve violent or dangerous crimes.

Practitioners should be aware that there are challenges to the required heightened showing of hardship for nonimmigrants convicted of dangerous or violent crimes.

CIMTs that are also aggravated felonies can be waived for non-LPR applicants. However, aggravated felons who are LPR applicants are generally barred from obtaining §212(h) relief.

---

13 Lujan-Armedariz v. INS, 222 F.3d 728 (9th Cir. 2000).
14 Estrada v. Holder, No. 05-75772 (9th Cir. March 26, 2009).
15 INA §212(h)(2).
16 Jean v. Gonzales, 452 F.3d 392 (5th Cir. 2006); Rivas-Gomez v. Gonzalez, 441 F.3d 1072 (9th Cir. 2006); Ali v. Achim, 468 F.3d 462 (7th Cir. 2006).
18 See AILF Practice Advisory §212(h) Eligibility: Case Law and Potential Arguments (February 19, 2008).
There are further exceptions regarding who can qualify for a waiver under this section. A waiver cannot be granted to those who fall into the following categories:

- A conviction of, admission of acts that constitute, an attempt or conspiracy to commit murder or criminal acts involving torture,
- Previously admitted for lawful permanent residence and thereafter was convicted of an aggravated felony, or
- Has not lawfully resided continuously in the United States for a period of not less than 7 years preceding the initiation of removal proceedings.

It is important to note that two individuals, one an LPR, the other who has never been an LPR, are treated differently under this section. A non-LPR is eligible for a waiver regardless of his or her unlawful status in the United States. He or she is not required to prove residence in the United States for any period of time. He or she is eligible even if convicted of an aggravated felony. As long as he or she meets the standard for the I-601 waiver, he or she is eligible to apply.

If an applicant qualifies for a waiver under this section, he or she should file Form I-601, Application to Waive Certain Grounds of Inadmissibility, along with the appropriate fee. In addition to the application, the applicant should submit evidence that includes, but is not limited to: police reports from any country where the applicant resided, court records regarding any charge or conviction from any country, evidence of rehabilitation, affidavits from the applicant or others in support of the application, etc.

If the applicant qualifies for the waiver because of his or her qualifying relationship to a USC or LPR, the applicant must demonstrate that his or her denial of admission would result in extreme hardship to the qualifying family members. Factors to be considered in determining the existence of extreme hardship are established by the Board in Matter of Anderson. The following factors were enumerated:

1. Nonimmigrant’s age;
2. Length of residence in the United States;
3. Family ties in the United States and abroad;
4. Health;
5. Financial status, business or occupation;
6. Possibility of other means of adjustment of status;
7. Nonimmigrant’s immigration history;
8. Nonimmigrant’s position in the community; and
9. Economic and political conditions in the country to which the nonimmigrant may be returned.

All factors must be considered in its entirety. No one factor will be sufficient in itself to justify a finding of extreme hardship; neither will the absence of one factor preclude a finding of extreme hardship. Each case must be carefully evaluated and all possible factors must be weighed together.

**INA §212(I) FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT**

Under INA §212(a)(6)(C)(i), anyone who has sought or seeks to procure or procured a visa, other documentation, or admission into the United States or other benefit is inadmissible. INA §212(i) waives this section for an immigrant who is the spouse, son, or daughter of a USC or a LPR if the applicant can show that refusal of admission would result in extreme hardship to the USC or LPR spouse or parent or the qualifying parent or child of a VAWA self-petitioner. No court has jurisdiction to review a decision or action relating to this waiver. It should be noted that qualifying relatives for a §212(i) waiver are more restricted than qualifying relatives for a §212(h) waiver.

---

21 Turri v. INS, 997 F.2d 1306 (10th Cir.1993); Hernandez-Cordero v. INS, 819 F.2d 558, 563 (5th Cir. 1987); Prapavat v. INS, 662 F.2d561 (9th Cir. 1981).

Copyright © 2009 American Immigration Lawyers Association
In addition to the statutory basis of inadmissibility found in INA §212(a)(6)(c), one should refer to the Foreign Affairs Manual (FAM) 40.63 for the standards of intentionality and materiality as applied to fraud and misrepresentation.

In these cases, it is important to analyze the facts surrounding the case and determine whether the elements of materiality and intentionality have, indeed, been proved. For “fraud,” there must have been the actual intent to deceive. For misrepresentation, no actual intent to deceive is required. The FAM defines “willful misrepresentation” simply as a “false misrepresentation, willfully made, concerning a fact, which is relevant to the alien’s entitlement.”

The application for this waiver is submitted on Form I-601, with supporting documentation and the filing fee of $545. The standard for extreme hardship is the same as described for the §212(h) waiver in the preceding section.

In the Matter of Cervantes-Gonzales, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative under INA §212(i). These factors are: presence of family ties to USC or LPR residing in the United States; family ties outside the United States; country conditions where the qualifying relative would relocate and family ties in that country; the financial impact of departure; and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate.

---

22 9 FAM 40.62 N. 3.
Citations from Daniel Chavez


Toribio-Chavez v. Holder, 611 F3d 57 (1st Cir. 2010)

Gonzalez-Maldonado v. Gonzalez, 487 F.3d 975 (5th Cir. 2007)

Forbes v. INS, 48 F.3d 439 (9th Cir. 1995)


Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (B(A 1999) aff'd, Cervantes-Gonzalez v. INS, 244 F.3d 1001 (9th Cir. 2001)


Marriage Fraud Is Different

204(c) Limitation on orphan petitions approved for a single petitioner; prohibition against approval in cases of marriages entered into in order to evade immigration laws; restriction on future entry of aliens involved with marriage fraud.--Notwithstanding the provisions of subsection (b) no petition shall be approved if--

204(c)(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 Attorney General to have been entered into for the purpose of evading the immigration laws or

204(c)(2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

If the USCIS determines that the marriage was entered into to evade immigration laws, INA Section 204(c) bars the approval of any subsequent petitions filed on the immigrant’s behalf. That includes visa petitions by employers, future spouses, and other relatives. There is no waiver available if there is a finding of INA Section 204(c) marriage fraud.

CRIMINAL CONSEQUENCES

In addition to civil consequences there are also CRIMINAL CONSEQUENCES:

I. WHAT ARE THE CRIMINAL CONSEQUENCES OF MARRIAGE FRAUD?

Under Section 1325(c) of Title 8 of the United States Code, a subsection titled “Marriage Fraud,”

“Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.”

See 8 U.S.C. §1325(c).

Other proscriptions against criminal conduct are found at Title 18 of the United States Code, Section 1546(a), which among other provisions makes it a crime to give a false statement under oath in any document required by the immigration laws or regulations. See 18 U.S.C. §1546(a). Section 1546(a) punishes anyone who knowingly subscribes as true any false statement with respect to a material fact in any documentation
required by immigration laws. As a result, sham marriage participants violate Section 1546(a) by claiming they engaged in a bona fide marital union when in fact their marriage was meant only to obtain an immigration benefit for the alien spouse. In that situation, the couple’s assertion that their marriage is bona fide is a material fact that is knowingly misrepresented to the government. Finally, under some circumstances, sham marriage participants convicted for false representation under Section 1546(a) may also be convicted under other related statutes.


SO WHAT IS ‘MARRIAGE FRAUD?’

I. HOW DOES USCIS INTERPRET “FRAUDULENT AT INCEPTION?”

Test for Fraudulent-at-Inception

Evidence supporting bona fides of marriage. Matter of Laureano, 19 I&N Dec. 1 (BIA 1983) [look to evidence including “proof that the beneficiary has been listed as the petitioner’s spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship wedding ceremony, shared residence, and experiences”].

Read the cases–Often distinguishable

USCIS Fraud Referral Sheet
USCIS Fraud Referral Sheet which was submitted into evidence by ICE during removal proceedings. AILA Doc. No. 10012861.
Overcoming Marriage Fraud and Standard of Proof

EXAMPLES

Schwartenegger CASE— Any similarity to persons real or fictional is purely coincidental. Case of husband who had an affair and fathered a child which he kept hid from his current wife. Natz case not living in marital union, wife applicant unaware of husband’s affair with ex-spouse where he fathered a child during marriage to current wife.

Public record disclosures

Recent example: Have you had the motorcycle out?

Case resulted in NTA: “you entered into a marriage for the purpose of circumventing immigration laws in order to procure your admission to the U.S. as a lawful permanent resident.”

Strategy: Now ex-husband will testify that he had an affair and hid it from his wife. “Innocent spouse doctrine.” Thanks to Arnold I’ve got a good example of a similar situation in real life and in the news. 8 years of joint business, real estate records, banking records, joint tax returns, etc.

Ta– Site visit, cultural issues. Appeal —decision “while there is some evidence in the record that the petitioner and the beneficiary engaged in a sham marriage, we need not reach this issue in view of our determination that the petitioner did not establish her marriage was bona fide.” In other words: insufficient evidence in support of the petition. Petitioner has burden of proof

Strategy: My own site visit with photos. Possible cultural expert. Questions:

1) Why do you think your Mother chose Mr. X to be your husband?

2) What qualities was your Mother looking for when she chose Mr. X to be your husband?

3) What are the positive qualities that you see in Mr. X?

4) How would you describe your marriage?

5) What cultural differences are there that factor into your relationship?

6) What do you get out of the marriage?

7) What do you see as the future for you and Mr. X?

8) Do you plan on having children?

9) What keeps you together? or Why do you stay married?

10) What other things should Immigration understand to recognize your relationship?
Do Annulments and Subsequent Marriages Matter?

Qualified response: Yes and No

SUVO ROV v. Gonzales  428 F.3d 1156 (8th Cir.2005)

I-751 Instructions: “you entered the marriage in good faith but the marriage was later terminated due to divorce or annulment”

Strategy was to contest the annulment alleging marriage fraud. Did so and instead obtained divorce. Didn’t make issue go away.

Immigration Judge Issued a 58 page opinion. No fraud but found lack of good faith. This was important because there was a subsequent relationship and marriage to a second U.S. Citizen.

Other situation: Marriage to USC where conditional residency is obtained. While still a Conditional

Cases regarding materiality of misrepresentation:

Matter of Box, 10 I & n Dec. 87 (BIA 1962). In the Matter of Box, supra, the respondent, a native and Citizen of Haiti was denied an immigrant visa after having entered the United States in 1957 using an alias. He escaped physical persecution upon returning to Haiti in 1958 and assumed a fictitious identity in which he was married; he secured a delayed birth certificate with which he obtained a passport and visa for entry to Nassau. In Nassau he took up his assumed identity, lived there for one and a half years and made application in 1960 for a visa to come to the United States. The court in Matter of Box held that his willful misrepresentation as to place and date of birth, parentage, marital status, prior residence, and use of alias were not material under Section 212 (a) (19) of the Immigration and Nationality Act because on the two facts a ground of inadmissibility would not have been revealed nor would an inquiry resulted in the proper determination of excludability.

Matter of M R, 9 I & n Dec. 602 (BIA 1962). In Matter of M R a twenty-seven year old widow native and citizen of Mexico was admitted to the United States for permanent residence where she had failed to reveal her true name, martial status and the fact that she had children when she applied for the visa. The special inquiry officer ordered that deportation proceedings were terminated and the BIA affirmed the termination of deportation proceedings. What was key in the court’s determination was whether or not the true facts would lead to a relevant line on inquiry that would make the alien excludable.