"My Achin' Heart": Strategies in Overcoming Findings of Marriage Fraud

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What is Marriage Fraud?

- INA §204(c) – prohibits approval of 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
- FDNS – created in 2004 and with expansion increase chances of marriage fraud findings
- In 2009, FDNS had workforce of 650 officers

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USCIS' Burden of Proof in Finding an INA §204(c) Bar

- Finding must be made based on substantial and probative evidence
- *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990), director should not give conclusive effect to determinations made in prior proceedings, but should reach independent conclusion
- Notice of intent to deny
- Many denied I-130 cases do not come under the 204(c) bar

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Appeal or Re-File – How to Handle a Denied I-130 Petition

- Consider the reason for denial
- Resources of client – costs associated with both
- Strategies for seeking best result possible
- Decision must be made by petitioner, beneficiary is not in control

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When is Filing a New Petition the Best Option

- Client did not present sufficient evidence with initial petition
- Basis of denial is a legal barrier that cannot be overcome by appeal
- Client has been placed in removal proceedings, re-file may be faster
- I-130 denied for failure to submit required documents

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When to Appeal?

- An appeal does not preclude petitioner from submitting additional evidence
- Denial was based on finding of marriage fraud – you will want to challenge the finding by appeal
- Belief that denial was based on officer's independent actions and that those actions were inappropriate or incorrect

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Conflicting Agency Decisions

- What to do when the I-130 is approved but a consular officer suspects fraud (Notice of Intent to Revoke)
- USCIS denies I-130 and in removal proceedings IJ makes positive good moral character determination – how to make this determination work to your client's advantage

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Challenging INA §204(c) findings in Immigration Court & District Courts

- *Bangura v. Hansen*, 434 F.3d 487 (6th Cir. 2006) – court permitted review of constitutional, APA and INA challenges to INA §204(c) bar because it is non-discretionary
- Other courts have found denial of an I-130 petition based on marriage fraud may have a binding effect in removal proceedings because IJ may not have authority to review
- Argue client has a protected interest in discretionary relief

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How to Challenge a Marriage Fraud Finding

- Petitioner was coerced into swearing they entered the marriage in order to obtain an immigration benefit
- Submit new affidavits with details regarding prior comments and writings
- INA §204(c) bar applies to ALL petitions filed after the bar was added on November 10, 1986

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Other Potential Forms of Relief

When Someone Has a Marriage Fraud Determination

- U Visa – fraud waiver available so an applicant could overcome a 204(c) bar
- Cancellation of Removal
- 237(a)(1)(H) Waiver
- Derivative Beneficiaries (I-601 required)

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Questions & Answers

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