

# COMMUNITY

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ATTY. ROBERT REEVES & JEFF L. KHURGEL

## The immigration consequences of marriage fraud

conduct of the parties after the marriage to prove their intent at the time of its inception. Relevant factors, which may be addressed at the interview include whether the couple is living together, whether they jointly own property, and whether they are conducting themselves as husband and wife. Officers look for visual clues such as body language and whether a wedding ring is worn.

When USCIS has evidence that the marriage is not a legitimate one, officers will deny the marriage-based petition and the application for adjustment of status. If a person is charged with entering into a marriage solely for the purpose of evading immigration laws he will be barred under Section 204(c) Immigration and Nationality Act as amended. A 204(c) finding has severe immigration consequences. The recipient has almost no hope of obtaining permanent resident status in the United States. Once a denial order is issued every subsequent petition filed on the applicant's behalf will be denied. This rule applies whether the latter petition is a family or employment-based petition. The only exception to this strict rule, as set forth in a 1993 Board of Immigration Appeals decision, is that a fraud determination does not bar the approval of a second petition based on the same marriage.

Prior to a 204(c) finding, USCIS will often summon the applicant and spouse for a second interview. This interview is also referred to as a "marriage fraud interview" or "Stokes interview", named for the New York District Court case which established guidelines within that district for a subsequent interview in which legitimacy of the marriage is at issue. During the second interview, the couple will be separated then questioned individually as to the specifics of their marriage. A wide variety of questions should be anticipated, such as the details of the couple's first date, questions about furni-

ture in the home or how holidays have been celebrated by the couple in the past. The couple's attorney will be present during each separate interview to ensure compliance with Federal Regulations and USCIS policy on the part of the officer and to assist the couple where appropriate.

In recent months adjudications officers are questioning not only the veracity of the current marriage, but also inquiring into past marriages of the couple. Such questions should particularly be anticipated where the petitioning spouse previously received their Lawful Permanent Resident status on the basis of a petition from a prior spouse. USCIS examiners believe that prior marriages are fair game at the interview regarding their new marital petition. We do not believe that past marriages are a legitimate line of inquiry, but appear to be more of a witch hunt in an effort to establish ineligibility to become a permanent resident. There are, however, some exceptions which would allow this line of inquiry.

Prior to the preparation and submission of documents to the USCIS a thorough examination of all relevant information must be undertaken. Prior to attending any immigration interview, a preparatory session and review of relevant information must also undergo strict professional scrutiny. There are severe consequences for individuals charged with entering into a marriage to evade immigration laws.

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