

Interpreter Releases
Report and analysis of immigration and
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*2615 19. BIA Addresses Timeliness of Appeal and Discrepancies in Stokes Interview in Unpublished Decision

In an October 9, 2007 single-member nonprecedent decision written by Ana Landazabal Mann, [FN75] the Board of Immigration Appeals (BIA or Board) treated a motion to reconsider its March 24, 2006 dismissal of an appeal as untimely as a motion to reconsider and reopen, granted the motion, and remanded the record to the Department of Homeland Security (DHS) for further proceedings to include the issuance of a new decision by the district director consistent with the Board's opinion in this matter. *Matter of Chen*, A79 717 355 (BIA Oct. 9, 2007).

The petitioner, a Chinese national and naturalized U.S. citizen, filed an I-130, Petition for Alien Relative, on behalf of his wife, also a Chinese national. The parties were married on July 20, 2001, and the visa petition was filed the following month. The parties were interviewed on July 13, 2003. The district director denied the petition in a decision dated May 13, 2005, which was mailed on May 16, 2005. The appeal was filed on June 14, 2005. In a decision rendered March 24, 2006, the Board dismissed the appeal as untimely. The petitioner filed a motion to reconsider on April 17, 2006. The Board found that it had jurisdiction over the motion as it challenged the Board's prior jurisdictional determination and that the motion should be treated as a motion to reconsider and to reopen. In the motion, the petitioner pointed out that the district director's opinion was not mailed until May 16, 2005, and *2616 submitted a copy of the postmarked envelope to substantiate the mailing date. Consequently, the Board noted, the 30 days in which to bring the appeal [FN76] ended on June 15,

2005, and the June 14, 2005 appeal was in fact timely. Accordingly, the Board granted the motion to reopen.

In denying the I-130, the district director stated that the petitioner failed to submit adequate evidence to demonstrate a bona fide marital relationship with the beneficiary and cited discrepancies in the parties' responses to 11 questions during the *Stokes* interview, [FN77] including that the beneficiary did not know the details of her husband's naturalization or how he obtained his permanent resident status, that she did not know her father-in-law's first name or when her mother-in-law passed away, that she did not know where her husband's three children from his first marriage resided or that her husband had seen his three children at a coffee shop two weeks prior to the interview, that she did not know where the petitioner was living before she married him, and that the parties had different answers to questions about whose name appeared on the phone bill, the amount in the bank account, and whether the husband had made transactions on that bank account.

On appeal, the petitioner proffered what the Board found to be reasonable explanations for these cited discrepancies. Moreover, the Board found that the interview transcript revealed that, in the case of two of the cited discrepancies, the parties' responses were actually consistent in that in response to a question about their bank account balance, the petitioner stated that it was "\$1,000 something" and the beneficiary said initially that it was "\$1,000 something" and then added that it was "like \$1,500," and, concerning the petitioner's children from his first marriage, the transcript reflected that both parties indicated that the beneficiary and the children had not met because they did not wish to do so. Other discrepancies, the Board found, were relatively minor--related to Chinese cultural differences or related to information that the other marital partner would not necessarily know. By way of example, the Board noted that the petitioner explained that the beneficiary did not know the name of his father who was living in China because she referred to him only by the traditional honorific "Father" and that she did not know the date of his mother's death because he simply had not told her. Additionally, the Board pointed out that the district director's decision did not discuss many areas where the parties gave consistent answers and did not include a detailed analysis of the joint financial documents submitted by the petitioner, among which were a lease agreement, tax returns, and bank statements. Finally, the Board said, since the May 2005 decision was rendered more than two years ago, the petitioner should be given the opportunity to supplement the record in view of the passage of time.

Accordingly, the Board remanded the record with instructions that the petitioner may submit additional joint financial documents, affidavits, photographs, and testimony spanning the years of the parties' marriage and that both the petitioner and

DHS be given the opportunity to present any and all available relevant evidence. The Board further instructed the district director to issue a new decision that "fully addresses the proffered evidence as well as the interview areas in which the parties gave consistent answers."

The petitioner was represented by Alan Lee, New York City, New York. DHS was represented by Jason Rafael, Associate Regional Counsel.

[FN75]. Kevin Ohlson, Director of the Executive Office for Immigration Review, appointed Ms. Mann as a Temporary Board Member. See 84 Interpreter Releases 1192 (June 4, 2007).

[FN76]. See 8 CFR § 1003.3(a)(2), which, as the petitioner pointed out to the Board, grants the petitioner 30 days from the date of service of the decision in which to appeal.

[FN77]. A "*Stokes* interview" is an interview during which DHS investigates the legitimacy of a marriage upon which an I-130 petition is based to ensure that the marriage is not a fraud. The hearing is named after *Stokes v. U.S. Immigration and Naturalization Service*, 393 F. Supp. 24 (S.D. N.Y. 1975), the seminal case in which a judge rejected a constitutional challenge to the interview requirement for I-130 visa petitions based on marriage.

***2616 20. USCIS Service Center and Lockbox Receiving Update**

U.S. Citizenship and Immigration Services (USCIS) has again updated its weekly service center and Lockbox receiving notice. USCIS processing of fee payments and entry of cases into its tracking system remains behind schedule. As a result, applicants are experiencing delays in receiving notices of receipt. The latest update includes the following statement:

IMPORTANT: Contact Customer Service toll-free at 1-800-375-5283 for:

Change of Address--If you have submitted your application and are changing your address, but have not yet received your receipt. (If you have a receipt, you can report your change of address from our website, using USCIS' Change of Address Online.)
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Unusual Delay--If you have not received a receipt within the timeframe indicated below for the *Service Center* where you filed your application.

The update is reproduced in Appendix VI of this Release.

Appendix VI

***2617 21. Newly Introduced Legislation**