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U.S. Citizenship and Immigration Services

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[redacted]

FILE [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 21 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal was denied by the Director, Lincoln, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria and a citizen of Canada. The record reflects that the applicant entered the United States as a student in January 1985, and that he married a U.S. citizen (Ms in August 1985. In September 1985, Ms. filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The petition was denied by the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) after a Service investigation found that the marriage was a sham. The applicant was subsequently placed into deportation proceedings, and on October 24, 1989, an immigration judge (IJ) affirmed that the applicant was deportable as charged and ineligible for deportation relief.

The applicant appealed the 1989 IJ decision to the Board of Immigration Appeals (Board). On January 16, 1991, the Board affirmed that the applicant was involved in a sham marriage and that he was deportable as charged. The applicant did not appeal the Board decision. Instead, in March 1991, he filed a second I-130 petition with the Service, again based on his marriage to Ms. The applicant's second I-130 petition was erroneously approved by the Service. On this basis, the applicant filed a motion to reopen his deportation proceedings with the Board. Upon discovery of its mistake, the Service revoked the applicant's erroneously approved (second) I-130 on December 17, 1993. The Board subsequently dismissed the applicant's motion to reopen as moot in 1995.

In August 1994, the applicant appealed the Board's 1991 decision affirming that he was involved in a sham marriage and that he was deportable, to the United States District Court of Minnesota (District Court). The applicant also appealed the Service's revocation of his second I-130 visa approval to the District Court. On March 13, 1995, the District Court found no evidence to support a finding of a bona fide marriage between the applicant and Ms The District Court additionally found no evidence that the Service had abused its discretion when it revoked the applicant's second I-130 approval. The District Court subsequently affirmed the Board and Service decisions, and the applicant's appeal was dismissed with prejudice.

In August 1995, the applicant appealed the 1995 District Court dismissal of his case to the U.S. Eighth Circuit Court of Appeals (Eighth Circuit). The Eighth Circuit found no abuse of discretion in either the denial or revocation of the applicant's I-130 petitions, and the District Court decision was affirmed.

On March 21, 1996, the applicant was served with a Form I-166 instructing him to report for deportation on March 21, 1996. The applicant did not report for deportation, and instead departed the United States independently on April 17, 1996.

After divorcing Ms. the applicant married another U.S. citizen (Ms. in Canada in 1997. Ms. filed an I-130 on the applicant's behalf. The record reflects that this petition was approved by the Service on October 19, 2000. The applicant now seeks permission to reapply for admission into the United States after deportation or removal (I-212 application) so that he can reside with his present wife in the United States.

The district director found that, based on the evidence in the record, the applicant had failed to establish that the favorable factors in his case outweighed the unfavorable factors. The application was denied accordingly.

On appeal, counsel asserts that pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c), an applicant who has previously engaged in marriage fraud is ineligible to receive an approved I-130 petition for alien relative. Counsel asserts that the Service's approval of Ms. Keown's I-130 petition on the applicant's behalf is therefore clear evidence that the Service no longer considers the applicant's first marriage to be a sham marriage.

Counsel asserts further that in denying the applicant's I-212 application, the Service relied on erroneous legal standards and disregarded and incorrectly interpreted the facts of the applicant's case.

Section 204(c) of the Act states, in pertinent part that:

> Notwithstanding the provisions of subsection (b) no petition shall be approved if (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 [now Secretary, Homeland Security, "Secretary"] to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 C.F.R. § 204 (a)(1)(ii) states in pertinent part:

> (a) Petition for a spouse.
>
> > (1) Eligibility. A United States citizen or alien admitted for lawful permanent residence may file a petition on behalf of a spouse.
> >
> > . . . .
> >
> > > (ii) Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a 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. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

The AAO finds that the evidence contained in the applicant's alien file clearly establishes that the Service, the Board of Immigration Appeals, the U.S. District Court of Minnesota and the

Eighth Circuit Court of Appeals have determined and affirmed that the applicant was previously involved in a sham marriage for immigration purposes. As such, the applicant was clearly not eligible to be approved as the beneficiary of an I-130 petition filed by his present wife.[1] The AAO notes that in the present case, the Service (now CIS) must follow the regulations and statutory law provided for in section 204 of the Act, and that, given the previous conclusive determinations of a sham marriage, the Service had no authority to approve an I-130 petition on behalf of the applicant.[2]

In *Matter of Martinez-Torres,* 10 I&N Dec. 776 (BIA 1964), the Board held that in the case of an applicant who is mandatorily inadmissible to the U.S. "no purpose would be served in granting [the] application for permission to reapply for admission into the United States." The BIA held further that denying an I-212 application as a matter of administrative discretion in such a case was proper.

A review of the documentation in the record reflects that the applicant is statutorily inadmissible to the United States. In light of the applicant's inadmissibility, no useful purpose would be served in adjudicating or granting the applicant's I-212 application. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] The AAO notes further that, as a general matter, the applicant is statutorily ineligible for approval of any visa petition filed on his behalf.

[2] The AAO notes that based on the evidence in the record, a CIS revocation of the applicant's present I-130 visa petition would be proper. *See* Section 205 of the Act, 8 U.S.C. § 1155.