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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

FILE: [redacted] Office: [redacted] Date: AUG 1 0 2010

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[redacted]

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the district director for further proceedings consistent with this decision.

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation. The applicant is the son of a naturalized citizen of the United States. The district director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative. Furthermore, the director also stated that section 204(c) of the Act, 8 U.S.C. § 1154(c), 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 denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), and the applicant submitted a timely appeal.

The record includes a marriage certificate for the applicant and [redacted] issued in the Dominican Republic in 1985) and reflecting they married on July 13, 1985; a Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (Form I-130), [redacted] on behalf of the applicant on December 27, 1985; a second Form I-130 filed [redacted] on behalf of the applicant on [redacted], and approved by the former Immigration and Naturalization Service (INS) on [redacted]; the Form I-130 filed by [redacted] on behalf of her son, the applicant, on November 13, 2000, and approved on March 2, 2005; the Form I-601 filed by the applicant on September 14, 2007, and denied on December 10, 2007; a letter by a physician; and a letter by a psychiatrist.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 204(c) of the Act states:

> [N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (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.

8 U.S.C. § 1154(c). The corresponding regulation provides:

> 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.

8 C.F.R. § 204.2(a)(ii). A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. [redacted] (BIA 1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion, and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.; Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

The marriage certificate reflects that the applicant married naturalized citizen [redacted] in the Dominican Republic on July 13, 1985. [redacted] filed a Petition for Alien Relative on behalf of the applicant on December 27, 1985. The former INS approved the Form I-130 on December 27, 1985. At his immigrant interview on June 12, 1986, the applicant was found ineligible for an immigrant visa under section 221(g) of the Act (having entered into a sham marriage), and the Form I-130 was returned to the former INS. An investigation conducted on February 22, 1988 revealed that the applicant entered into marriage with [redacted] solely for immigration purposes. On November 9, 1989, the applicant entered the United States without inspection.

[redacted] filed a second Form I-130 on behalf of the applicant, which was approved by the former INS on May 7, 1993. The applicant and [redacted] divorced on March 25, 1995. The applicant's mother filed the Form I-130 on November 13, 2000, which was approved on March 2, 2005. **On September 14, 2007, the applicant was refused an immigrant visa under section** 212(a)(6)(C)(i) of the Act for entering into a sham marriage with for immigration purposes. The applicant filed the Form I-601, stating in the waiver application that "I marry my premium [redacted] Only in order to obtain residence to be able to live in the United States of America." Because the record does not show that the applicant's marriage to [redacted] was entered in good faith and not for the purpose of evading the immigration laws of the United States, the AAO must conclude that the applicant's prior marriage is within the purview of section 204(c) of the Act as a marriage entered into for the purpose of evading the immigration laws. In that the applicant's prior marriage has been found to have been entered into for the purpose of evading the immigration laws of the United States, he is permanently barred from obtaining a visa to enter the United States. *See* 8 U.S.C. § 1154(c).

Pursuant to 8 C.F.R. § 205.2, the approval of an I-130 petition is revocable when the necessity for the revocation comes to the attention of the Service. Therefore, the AAO remands the matter to the district director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the district director will issue a new decision dismissing the applicant's Form I-601 as moot. In the alternative, should it be determined that the applicant is not subject to section 204(c) of the Act, and that the Form I-130 is not to be revoked, then the district director will issue a new decision addressing the merits of the applicant's Form I-

601 waiver application. If that decision is adverse to the applicant, it will be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

ORDER: The matter is remanded to the district director for further proceedings consistent with this decision.