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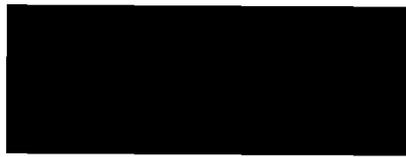
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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DATE: **DEC 02 2011** OFFICE: SANTO DOMINGO

FILE:

IN RE: APPLICANT:

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 \$630. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Santo Domingo, the Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for further action.

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in join her U.S. Citizen spouse and child in the United States.

The Acting Field Office Director concluded in addition to failing to establish the applicant's qualifying relative would suffer extreme hardship if the waiver was not granted, the applicant's "answers from [a 1996] interview along with an investigation showed that [the applicant's prior] marriage was contrived for the purposes of gaining [her] entrance into the United States and obtaining an immigration benefit." *See decision of Acting Field Office Director, July 31, 2009.* The Acting Field Office Director denied the application accordingly. *Id.*

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. *Matter of Rahmati*, 16 I&N Dec. 538, 359 (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 record reflects that the applicant married lawful permanent resident [REDACTED] on July 11, 1995. [REDACTED] filed a Form I-130 Petition for Alien Relative on behalf of the applicant on November 9, 1992, which was approved on November 19, 1992. At their immigrant interview, the applicant and [REDACTED] gave widely inconsistent answers on several issues, including how and when they met, identities of family members including the petitioner's children, and information about [REDACTED] visits with the applicant in the Dominican Republic. On August 7, 1997 the applicant was refused an immigrant visa for attempting to obtain her visa through a sham marriage. On June 7, 2002, the applicant and [REDACTED] divorced. [REDACTED] married the applicant on August 25, 2006 in the Dominican Republic. He filed the Form I-130 on her behalf, which was approved on March 8, 2007. On August 20, 2008 the applicant was refused an immigrant visa under section 212(a)(6)(C)(i) of the Act for entering into a sham marriage with [REDACTED] for immigration purposes. The applicant filed the I-601 waiver application on February 10, 2009, which was denied on July 29, 2009. The consular section of the U.S. Embassy, Santo Domingo, sent the applicant's current Form I-130 to the USCIS Service Center for a determination of whether section 204(c) of the Act applies.

Absent an approved Form I-130 no purpose would be served in adjudicating the appeal of the applicant's Form I-601 as the applicant would have no avenue through which to immigrate to the United States. Therefore, the AAO remands the matter to the Field Office Director to determine whether a 204(c) finding has been made, and whether the Form I-130 has been revoked. Should the approved Form I-130 petition be revoked, the applicant's Form I-601 will be moot and no further action will be required. 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 Field Office Director will return the file to the AAO for adjudication of the appeal of the Form I-601 waiver application.

ORDER: The appeal is remanded to the Field Office Director for further action as noted in this decision.