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

U.S. Citizenship and Immigration Services

H5

[redacted]

Date: SEP 15 2011 Office: SANTO DOMINGO, DOMINICAN REPUBLIC FILE: [redacted]

IN RE: Applicant: [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 $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 Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director for further proceedings.

The record reflects that 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), for having sought to procure a visa by fraud or misrepresentation. The record indicates that the applicant is the daughter of a Lawful Permanent Resident of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on her mother and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The director noted that the applicant had previously entered into a marriage for immigration purposes and was, therefore, ineligible to receive a visa pursuant to section 204(c) of the Act. *Decision of the Field Office Director,* dated April 27, 2009.

On appeal, the applicant requests reconsideration. The applicant does not submit additional evidence. *See, Form I-290B.*

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). United States Citizenship and Immigration Services (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 [redacted] on [redacted] 1988 in the Dominican Republic. [redacted] filed a Form I-130 on behalf of the applicant on June 10, 1988. The legacy Immigration and Naturalization Service (now USCIS) approved the Form I-130 on September 7, 1988. After the applicant's immigrant visa interview on March 19, 1992, an investigation conducted by the Department of State determined that the applicant's marriage had been entered into solely for immigration purposes. When confronted with the investigation's findings, the applicant signed a confession stating that she had married her spouse in order to enter the United States as a Lawful Permanent Resident. On June 4, 1993, a notice of intent to revoke the approved Form-130 petition for marriage fraud was sent to [redacted] and he was granted 15 days to respond. The record does not reflect that a final decision revoking the Form I-130 was subsequently issued.

The current Form I-130 petition, filed by the applicant's Lawful Permanent Resident mother was approved on October 1, 1996. On June 18, 2008, the applicant was refused an immigrant visa under section 212(a)(6)(C)(i) of the Act for having entered into a sham marriage with [redacted] for immigration purposes.

The record reflects that the applicant entered into her marriage to [redacted] solely for immigration purposes. Accordingly, the AAO concludes that the applicant's prior marriage is within the purview of section 204(c) of the Act and that she is permanently barred from obtaining a visa to enter the United States. *See* 8 U.S.C. § 1154(c). In light of this permanent bar, no purpose would be served in addressing the applicant's contentions regarding her eligibility for an extreme hardship waiver of inadmissibility under section 212(i) of the Act.

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 USCIS. Therefore, the AAO remands the matter to the director to initiate proceedings for the revocation of the current approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the director will issue a new decision dismissing the applicant's Form I-601 as moot. In the alternative, should it be determined that the Form I-130 is not to be revoked under section 204(c) of the Act then the director shall return this matter to the AAO for review.

ORDER: The matter is remanded to the Field Office Director for further proceedings consistent with this decision.