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

U.S. Citizenship and Immigration Services

DATE: JUN 19 2013 Office: CALIFORNIA SERVICE CENTER 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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Trinidad and Tobago 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 to procure U.S. admission by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse. He is no longer the beneficiary of an approved Petition for Alien Relative (Form I-130).

The director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Director,* November 9, 2012.

On appeal, counsel contends that USCIS erred and abused its discretion in denying the waiver, asserting that the applicant has established his inadmissibility would result in extreme hardship to his U.S. citizen wife. The record includes, but is not limited to, counsel's brief; hardship statements; financial documentation; copies of passport pages and visas, birth, marriage, and naturalization certificates; divorce decrees; country condition information; and documents pertaining to the applicant's fraudulent marriage to a prior wife. The entire record was reviewed and all relevant information considered in reaching this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part,

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) of the Act provides:

> The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien [...].

The director found the record to establish that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure U.S. admission as a nonimmigrant when, in reality, he had immigrant intent, and by entering into a marriage for the purpose of procuring U.S. residency. Processing of a Form I-130 filed for the applicant by his second wife in 1989 revealed that he had paid the petitioner to marry him, which resulted in her withdrawal of the spousal petition and a determination by the Immigration and Naturalization Service (INS, now USCIS) that the marriage was a fraudulent one entered into for the sole purpose of obtaining an immigration benefit. Due to this marriage fraud, the INS denied the I-130 petition filed in 1997 by his third wife, to whom

he is currently married. In 2010, the applicant's son filed a Form I-130 for his father that was denied on November 9, 2012 pursuant to section 204(c) of the Act because of the prior sham marriage.[1] Although the applicant is not currently the beneficiary of an approved Form I-130, the center director addressed the merits of the applicant's waiver request in concluding that the applicant had failed to establish hardship to a qualifying relative, and this appeal followed.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The viability of the Form I-601 is dependent on an application to adjust status that is, in turn, based on immediate availability of an immigrant visa pursuant to an approved Form I-130. The applicant is no longer eligible for adjustment of status because the underlying Form I-130 was denied, and his Form I-485 was denied on November 9, 2012 based on the denial of the underlying petition. As he is not eligible to apply for adjustment of status, no purpose would be served in adjudicating the Form I-601 waiver of inadmissibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[1] Section 204(c) of the Act, 8 U.S.C. § 1154(c), provides that no alien relative 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 of Homeland Security] 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.