U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-P-

DATE: SEPT. 15, 2015

APPEAL OF LOS ANGELES FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native and citizen of Thailand, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Los Angeles Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

In a decision dated August 8, 2013, the Field Office Director found that the Applicant did not have a pending Form I-485, Application to Register Permanent Residence or Adjust Status, and thus, the Applicant's Form I-601 served no purpose and was denied accordingly.

On appeal, the Applicant states that in 2002 she was found inadmissible for marriage fraud and was granted voluntary departure by an immigration judge, but she did not leave the United States. The Applicant states that her removal order was reopened and terminated by an immigration judge so that she could adjust her status in the United States based on section 241(f) of the Act and *Virk v. INS*, 295 F.3d 1055 (9th Cir. 2002), which she states allows her to apply for an extreme hardship waiver. The Applicant states that she filed a new Form I-485 and Form I-601 based on a new marriage to a U.S. citizen. The Form I-130, Petition for Alien Relative, that the Applicant's current U.S. citizen spouse filed on her behalf and her most recent Form I-485 were denied under section 204(c) of the Act. She appealed the denial of her Form I-130 and filed a motion to reconsider for her Form I-485.

The record includes, but is not limited to, documents establishing relationships and identity, statements from the Applicant and her spouse, medical records, financial documents, and photographs. The entire record was reviewed and considered in rendering this decision.

The Applicant has not demonstrated that she is presently eligible to apply for a waiver. The record reflects the Board of Immigration Appeals (BIA) dismissed the appeal of the denial of the Applicant's Form I-130 on November 18, 2014. The BIA affirmed the denial of the Applicant's Form I-130 based on marriage fraud, citing to section 204(c) of the Act and *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990). The BIA indicated that *Virk v. INS* involved waiver proceedings in front of an immigration judge and a waiver that was not contingent on the approval of an underlying visa petition.

The filing of a Form I-601 is predicated on the necessity to demonstrate admissibility, which in this case is a requirement for adjustment to permanent resident status under section 245 of the Act. Although U.S. Citizenship and Immigration Services allows for the simultaneous filing of Forms I-130 and I-485, the Applicant's eligibility to apply for adjustment to permanent resident status is dependent on approval of the Form I-130 petition filed by her spouse.

In the absence of an approved Form I-130, the Applicant is not eligible to apply for adjustment of status, and her application for adjustment cannot be approved regardless of whether she is admissible or, if not, whether a waiver is available for any ground of inadmissibility.

Because the Applicant has been found to be subject to section 204(c) of the Act, she is unable to benefit from an alien relative petition filed on her behalf.

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 the Department of Homeland Security (Secretary)] to have been entered into for the purpose of evading the immigration laws or
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> (2) the [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

No waiver is available for violation of section 204(c) of the Act. 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).

In the absence of an underlying approved Form I-130, the Applicant is not eligible to apply for a waiver. The appeal must therefore be dismissed.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of P-P-*, ID# 10598 (AAO Sept. 15, 2015)