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

U.S. Citizenship and Immigration Services

#6

[redacted]

FILE: [redacted] Office: ACCRA Date: OCT 01 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The record reflects that on or about January 20, 1992 the applicant entered the United States without inspection. He filed a Form I-589 application for asylum in the United States on April 12, 1993. On March 11, 1997, he married a U.S. citizen, [redacted] On April 29, 1997, [redacted] filed a Form I-130 relative petition on behalf of the applicant. On the same date the applicant filed a Form I-485 application to adjust his status to lawful permanent resident. The applicant withdrew his application for asylum on June 4, 1997.

After conducting an interview of the applicant and [redacted] and reviewing the evidence in the record, legacy Immigration & Naturalization Service (the INS) (now United States Citizenship and Immigration Services (USCIS)) concluded that the applicant and [redacted] entered into their marriage as an attempt to evade the immigration laws of the United States in order to obtain benefits. On February 1, 1999, the Form I-130 petition was denied accordingly. On June 11, 1999, the INS further denied the applicant's Form I-485 application. On June 30, 1999, the applicant was placed into removal proceedings pursuant to a Notice to Appear.

On August 16, 1999, the applicant and [redacted] divorced. On August 26, 1999, the applicant married his current wife. On September 2, 1999, the applicant's wife filed a Form I-130 relative petition on his behalf. The applicant filed a Form I-485 application to adjust his status to lawful permanent resident on September 10, 1999 while in removal proceedings.

The record shows that on June 6, 2000, the INS issued a notice of intent to deny the Form I-130 relative petition, citing evidence that the applicant had previously entered into a marriage with [redacted] for the purpose of evading the immigration laws of the United States. The applicant responded to the notice, yet on April 24, 2001 the INS denied the Form I-130 petition on behalf of the applicant, concluding that the applicant failed to rebut the findings in the notice of intent to deny. The applicant appealed the decision to the Board of Immigration Appeals (BIA), yet on March 29, 2002 the BIA determined that the applicant failed to rebut the finding that he had previously entered into a marriage for the purpose of evading the immigration laws of the United States. The BIA stated the following:

> [We] find that there is substantive and probative evidence in the record that the beneficiary's first marriage was not bona fide. There exist a number of factors upon which the district director based his decision which are either not addressed or are not supported by objective evidence.

Decision of the BIA, dated March 29, 2002.

On April 30, 2001, the applicant's wife filed a second Form I-130 petition on behalf of the applicant. On July 16, 2001, an Immigration Judge denied the applicant's Form I-485 application and granted him voluntary departure until August 15, 2001. On August 15, 2001, the applicant filed a motion to reopen the removal proceedings. However, on January 3, 2002, his motion was denied. The applicant departed the United States on February 10, 2002.

On December 9, 2002, the INS issued a notice of intent to deny the second Form I-130 relative petition filed by the applicant's wife, again citing evidence that the applicant had previously entered into a marriage with [redacted] for the purpose of evading the immigration laws of the United States. The applicant responded to the notice on March 6, 2003, yet on April 2, 2003 the INS denied the second Form I-130 petition, maintaining that the applicant failed to rebut the findings in the notice of intent to deny. The applicant's wife appealed the denial to the BIA, yet on February 23, 2005 the appeal was dismissed based on a finding that the applicant's wife failed to file within the permitted 30-day period. The applicant's wife filed a second appeal before the BIA on March 24, 2005, yet the BIA dismissed the second appeal due to the fact that it was also untimely filed.

The applicant's wife filed a third Form I-130 relative petition on behalf of the applicant on March 2, 2006. USCIS approved the petition on June 29, 2006. However, the record lacks documentation to show that the applicant successfully rebutted the prior finding that he had entered into a marriage with [redacted] for the purpose of evading the immigration laws of the United States.

The applicant seeks admission to the United States as an immigrant based on the approved Form I-130 petition, and he filed the present Form I-601 application for a waiver of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Section 204(c) of the Act 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 [Secretary] to have been entered into for the purpose of evading the immigration laws or
>
> (2) the Attorney General [Secretary of Homeland Security] 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.

There is evidence in the record demonstrating that the applicant entered into his marriage to [redacted] for the purpose of evading U.S. immigration law. Accordingly, pursuant to section 204(c) of the Act he is not eligible to have a Form I-130 relative petition approved on his behalf. The record supports that the approval of the Form I-130 petition filed by his wife should be revoked.

Should the AAO make a determination that the applicant is to be granted a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act only to have the approved Form I-130 petition subsequently

revoked on the basis of the applicant's ineligibility under section 204(c) of the Act, the waiver would have no effect.

Therefore, the AAO remands the matter to the field office director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approval of the Form I-130 petition be revoked, the field office director shall issue a new decision dismissing the applicant's Form I-601 application 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 petition is not to be revoked, then the field office director shall return the Form I-601 application to the AAO for further processing of the appeal.

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