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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

#5

[redacted]

Date: OCT 07 2011 Office: LIMA, PERU FILE: [redacted]

IN RE: Applicant: [redacted]

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

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Peru who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit as well as for marriage fraud. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband in the United States.

The field office director found that the applicant's first marriage was fraudulent and that the applicant is ineligible to receive benefits from USCIS. The field office directly denied the waiver application accordingly. *Decision of the Field Office Director*, dated June 10, 2009.

On appeal, the applicant's husband contends he has been suffering extreme hardship since his wife's departure from the United States. Specifically, the applicant's husband contends he has diabetes and has been experiencing financial hardship.

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 [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.

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). 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).

In this case, the record shows that the applicant married [redacted] on April 4, 1994. The record reflects that on January 31, 1995, the applicant arrived at Miami International Airport. During inspection, the applicant admitted to an immigration officer that her aunt contracted with a man to look for a husband for her. The applicant admitted that a marriage was arranged with [redacted] that the marriage was never consummated, and that her intention was to live with her aunt to work and study in the United States. The applicant was not admitted to the United States and voluntarily returned to Peru. *Record of Sworn Statement of* [redacted] dated January 31, 1995.

The record further shows that the applicant entered the United States without inspection in July 1996. The applicant and [redacted] divorced on November 10, 1997. In addition, the record shows that the applicant married [redacted] a U.S. citizen, on December 23, 1997. [redacted] filed a Form I-130 on the applicant's behalf on March 19, 2001. The record shows that a Notice of Intent to Deny the Form I-130 was issued on December 24, 2002, according the applicant the opportunity to rebut the allegation that she entered into a fraudulent marriage with [redacted] The applicant responded, claiming that the immigration officers harassed, coerced, and threatened her, and that she was deceived and naïve in marrying [redacted] *Affidavit of* [redacted] dated January 21, 2003. The district director found that the applicant did not meet her burden of establishing that she had not previously engaged a fraudulent marriage to obtain an immigration benefit and denied the Form I-130 accordingly. *Denial of Visa Petition Pursuant to Section 204(c)*, dated May 26, 2004.

The record further shows that the applicant and [redacted] divorced on November 6, 2006. The applicant married her current husband, [redacted] a U.S. citizen, on November 24, 2006. [redacted] filed a Form I-130 on behalf of the applicant, which was approved on September 28, 2007.

On appeal, the applicant does not address the district director's finding of marriage fraud. Because the record does not show that the applicant entered into her marriage to [redacted] in good faith and not for the purpose of evading the immigration laws of the United States, the AAO must conclude that the applicant's prior marriage to [redacted] is within the purview of section 204(c) of the Act as a marriage entered into for the purpose of evading the immigration laws. In that the applicant's prior marriage has been found to have been entered into for the purpose of evading the immigration laws of the United States, 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(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), or 212(i) of the Act, 8 U.S.C. § 1182(i).

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 the Service. 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 approved Form I-130 petition be revoked, the field office director will issue a new decision dismissing the applicant's Form I-601 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 is not to be revoked, then the field office director will issue a new decision addressing the merits of the applicant's Form I-601 waiver application. If that decision is adverse to the applicant, it will be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

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