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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

[redacted]

H6

Date: JUL 13 2012 Office: NEW DELHI FILE: [redacted]

IN RE: [redacted]

PETITION: 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 PETITIONER:

[redacted]

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) were concurrently denied by the Field Office Director, New Delhi, India, and are now before the Administrative Appeals Office (AAO) on appeal. The matter is 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 India who entered the United States with a valid nonimmigrant visa on April 10, 1998, with permission to remain until July 13, 1998. The applicant remained beyond his period of authorized stay. Records indicate the applicant departed the United States on or around March 5, 2009.

In addition, the AAO notes that on August 3, 2000, the Form I-130, Petition for Alien Relative (Form I-130) filed on behalf of the applicant by his then wife , [redacted], was withdrawn pursuant to [redacted] written request. The basis for the withdrawal request was [redacted] written affidavit stating that she married the applicant in exchange for $4000. [redacted] further noted that she and the applicant never lived as husband and wife. *Record of Sworn Statement in Affidavit Form,* dated June 28, 2000.

In March 2005, the applicant's U.S. citizen spouse, [redacted], filed a Form I-130 on the applicant's behalf. The Form I-130 was denied in March 2006 based on a finding that the applicant was not eligible to receive an immigrant visa because he had previously applied for permanent resident status through a fraudulent marriage, as outlined above. *See Decision of the District Director, Sacramento,* dated March 28, 2006.

In October 2007, the applicant's U.S. citizen spouse, [redacted], filed a second Form I-130 on the applicant's behalf. The Form I-130 was approved in April 2008. However, on February 24, 2009, a Notice of Intent to Revoke Visa Petition was issued by the Field Office Director, Sacramento, California. The Notice referenced that service records evidenced that the applicant's prior marriage was entered into to evade the immigration laws of the United States. The Notice gave [redacted] 30 days to submit evidence in support of the petition and in opposition to the grounds stated for revocation. *See Notice of Intent to Revoke Visa Petition,* dated February 24, 2009. The record does not contain evidence establishing that counsel, [redacted] or the applicant responded to the Notice of Intent to Revoke. Nor does the record indicate that the Form I-130 that was approved in April 2008 has in fact been revoked as of today.

In June 2009, the applicant's U.S. citizen spouse, [redacted], filed a third Form I-130 on the applicant behalf. The Form I-130 was approved in June 2009. However, on September 30, 2010, the Field Office Director, New Delhi, India, revoked the Form I-130 approval, finding that the applicant's marriage to [redacted] was entered into for the purpose of evading immigration laws. *See Decision of the Field Office Director,* dated September 30, 2010.

The Field Office Director found the applicant 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 in the United States for more than one year. *See Refusal Worksheet,* dated February 9, 2010.[1] The Field Office Director further concluded that the applicant is also subject to section 204(c) of the Act. The Form I-601 and Form I-212 were denied accordingly. *Decision of the Field Office Director,* dated September 30, 2010.

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 C.F.R. § 204.2(a)(ii) 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.

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).

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[1] The record indicates that the applicant filed a Form I-212 in February 2010 concurrently with the Form I-601. The AAO notes that the applicant departed the United States in March 2009, approximately two months prior to the issuance of a Notice to Appear. *Notice to Appear,* dated May 22, 2009. Removal proceedings were therefore terminated by the immigration judge on September 1, 2009. As such, the record does not establish that the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously removed. The Form I-212 is thus rendered unnecessary.

Further, the AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains substantial and probative evidence that the applicant's marriage to [redacted] was entered into for the sole purpose of evading the immigration laws. Because the applicant's marriage to [redacted] was found to have been entered into for the purpose of evading the immigration laws of the United States, the applicant is permanently barred from obtaining a visa to enter the United States. *See* 8 U.S.C. § 1154(c). As such, no purpose would be served in addressing the applicant's contentions regarding his eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) 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 the Service. Therefore, the AAO remands the matter to the field office director to finalize the revocation of the Form I-130 that was approved in April 2008. As noted above, a Notice of Intent to Revoke Visa Petition was issued on February 24, 2009 but the record does not indicate that approval of the Form I-130 has in actuality been revoked at this time.

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