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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: GUANGZHOU Date: AUG 11 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Officer in Charge (OIC), Guangzhou, China, denied the waiver application that is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of China, the wife of a U.S. citizen, the mother of three U.S. lawful permanent resident (LPR) children, and the beneficiary of an approved Form I-130 petition. The OIC found the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having sought an immigration benefit through fraud or a misrepresentation of a material fact.

The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and LPR children. The OIC also found that the applicant previously entered into a sham marriage in an attempt to secure a preference visa, which act triggered the applicability of section 204(c) of the Act. The OIC noted that section 204(c) of the Act, 8 U.S.C. § 1154(c), prohibits the approval of a visa petition filed on behalf of an alien who has entered into a marriage for the purpose of evading the immigration laws and that no waiver is available for this bar pursuant to section 204(c) of the Act. The OIC denied the application accordingly.

On appeal, counsel contended that the law had been incorrectly applied in the instant case. Subsequently, counsel submitted a brief in support of the appeal. In that brief counsel asserted that the applicant had not entered into a sham marriage for the purpose of evading immigration laws.

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 entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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 204(c) of the Act, 8 U.S.C. § 1154(c), 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.

The regulation at 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).

The record contains a G-325 Biographic Information form that the applicant's current husband, [redacted] signed on June 21, 2001. On that document, the applicant's husband stated that he had married the applicant during December of 1972, that they were then divorced on February 19, 1992, and that they subsequently remarried on June 13, 2001.

On her own Form G-325, the applicant confirmed those two marriages, but also noted that she had had been married, during the interim, to [redacted], from April 1992 to August 10, 1999.

A Chinese divorce decree and English translation confirm that the applicant, as plaintiff, filed for a divorce from [redacted] during 1999. That document indicates that the applicant's then husband, [redacted], did not appear in court to contest the divorce. The document states, "The [applicant] complained . . . she . . . registered a marriage with [redacted] in April [1992] for the purpose of resettlement in the U.S.A." The court found that [redacted] ". . . due to some cause didn't succeed in the resettlement procedure for [the applicant]." The court noted that the applicant and [redacted] had then been out of contact for many years and granted the applicant her requested divorce.

Although the finding of that Chinese court is not binding in any way on the AAO, that the applicant stated to that court that her marriage to [redacted] was contracted specifically to obtain an immigration benefit is of considerable evidentiary weight.

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[1] Although the record contains various English transliterations of the Chinese name of the applicant's interim husband in this case, there is no dispute to whom the various documents refer. For the sake of clarity, this decision will refer to the applicant's interim husband as [redacted] or [redacted], notwithstanding that various documents in the record refer to him as [redacted], *etc.*

The record contains a Form I-130, Petition for Alien Relative, that [redacted] filed for the applicant, who was then ostensibly his wife, on July 19, 1992. That petition was approved on September 3, 1992.

The record contains a memorandum, dated January 10, 1997, based on an interview of [redacted]. That document states that a consular officer in Guanzhou interviewed [redacted] because of suspicion that the marriage of [redacted] to the applicant might not be *bona fide*. It states that, after numerous denials, [redacted] admitted that he had entered into a sham marriage with the applicant as a favor to his business partners, brother's of the applicant's previous, and present, husband, [redacted]. That [redacted], the applicant's ostensible interim husband, admitted that the marriage was a sham, is of considerable evidentiary weight.

The Immigration and Naturalization Service (INS), predecessor agency to USCIS, subsequently issued a notice, dated February 28, 1997, to [redacted]. The notice stated that INS intended to revoke approval of the previously approved Form I-130 that he had filed for the applicant. The INS received no response and, on May 1, 1997, revoked approval of that I-130 petition. No appeal was taken from that decision.

In the instant case, the applicant and her husband have contested the finding that the applicant's interim marriage to [redacted] was fraudulent. Notes from an interview of the applicant on August 15, 2002 indicate that the applicant stated that she never intended to abandon her marriage to Mr. [redacted] but that [redacted] returned to the United States, that she and [redacted] subsequently lost contact with each other, and that she divorced him based on that lost connection. She did not identify who introduced her to [redacted]

In an interview on that same date, the applicant's current husband stated that he has always considered the applicant to be his wife, and that he had no knowledge of the revocation of her previous I-130. He further stated that he has never met [redacted]. The applicant's husband did not address whether [redacted] is in a business partnership with the applicant's husband's brothers.

On appeal, counsel stated that section 204(c) does not apply in this case because the applicant did not enter into her marriage to [redacted] for the purpose of evading immigration laws or conspire to enter into a sham marriage to evade immigration laws. Counsel stated, "[The applicant's] marriage to [redacted] was a legitimate marriage and was not conducted, attempted, or conspired for the purpose of evading any immigration laws. Counsel did not, however, directly address the facts in this case, set out above, that demonstrate that her marriage to [redacted] was, in fact, a sham marriage contracted so that she could immigrate to the United States.

An independent review of the record establishes substantial and probative evidence that the applicant's marriage to [redacted] was entered into for the purpose of evading the immigration laws. Because the applicant's marriage was 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.

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[2] In this case, the applicant's former husband's name is transliterated as [redacted].

[3] In this case, the applicant's interim husband is referred to as [redacted].

See 8 U.S.C. § 1154(c). In light of this permanent bar, no purpose would be served by addressing the applicant's contentions regarding her eligibility for an extreme hardship waiver of inadmissibility under section 212(i) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.