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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

and

Office: MEXICO CITY, MEXICO
(SANTO DOMINGO)

Date:

FEB 06 2009

SDO 1996 750 258)

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Mexico City, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic, and her father is a lawful permanent resident of the United States. On July 18, 1996, the Immigration and Naturalization Service (INS) (now United States Citizenship and Immigration Services (USCIS)) approved the Form I-130, Petition for Alien Relative, filed on her behalf by her father. However, on January 17, 2006, the Consular Section of the U.S. Embassy in Santo Domingo formally refused to issue the applicant an immigrant visa, on the grounds that she was inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having previously sought to procure admission into the United States by fraud or willful misrepresentation. This determination was based on the applicant's participation in a "sham marriage."

In January 2006, the applicant filed the Form I-601, Application for Waiver of Excludability, that is the subject of this proceeding. The application seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which section 212(a)(6)(C)(iii) of the Act identifies as the waiver section applicable to the section 212(a)(6)(C)(i) bar to admissibility.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (i) 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 212(i)(1) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The district director determined that the applicant having previously participated in a sham marriage in order to obtain an immigration benefit was inadmissible to the United States and, further, was precluded from benefiting from any immigrant visa petition by section 204(c) of the Act. He denied the application accordingly. *Decision of the District Director*, dated August 3, 2006.

On appeal counsel contends that the denial of the waiver application would cause extreme hardship to the applicant's U.S. lawful permanent resident father. Counsel also acknowledges that the applicant "did previously attempt to enter the United States by misrepresenting the facts surrounding her prior marriage almost 15 years ago" and that "[o]n November 13, 1991, [the applicant] stated that she

entered into a marriage with the sole intention of coming to the United States.” *Counsel’s November 16, 2006 Letter to the AAO*, at 2 and footnote 1, at 2.

Prior to considering the applicant’s claim to extreme hardship, the AAO finds it necessary to consider whether she is eligible for waiver consideration under section 204(i) of the Act.

A review of the record finds that, on August 6, 1993, the legacy INS revoked the approval of an immigrant visa petition filed on behalf of the applicant by her former husband as it was determined that the marriage on which the petition was based had been entered into solely for the purpose of evading immigration laws. The record further indicates that, on November 13, 1991, the applicant admitted in writing to her participation in marriage fraud and that her purpose was to gain residence in the United States.

Section 204(c) of the Act states that no 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 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

Based upon its review of the entire record of proceeding, the AAO finds that section 204(c) of the Act applies to the applicant because she previously entered into a marriage to evade U.S. immigration laws. As the applicant is subject to the provisions of section 204(c) of the Act, which are very specific and applicable to the facts of this case, she is not eligible for approval of any immigrant petition filed on her behalf. Therefore, the AAO will dismiss the appeal, without determining whether the applicant merits a section 212(a)(6)(C)(i) waiver as it would serve no useful purpose.

ORDER: The appeal is dismissed.