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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
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FILE: [REDACTED] Office: MEXICO CITY, MEXICO (SANTO DOMINGO) Date: JUL 09 2009
SDO 200 251 8010

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 38-year-old native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has sought to procure a visa, other documentation, or admission to the United State through fraud or misrepresentation. The applicant is married to a U.S. citizen, and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act in order to reside in the United States with her husband and children.

The District Director concluded that the applicant failed to establish extreme hardship to a qualifying relative. *See Decision of the District Director*, dated Feb. 1, 2007. The District Director also found 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. *See id.* The District Director denied the application accordingly. *Id.* On appeal, the applicant contends that the denial of the waiver is causing extreme hardship to her husband and children. *See Form I-290B, Notice of Appeal*, dated Feb. 28, 2007.

The record contains, *inter alia*, a marriage certificate for [REDACTED] and [REDACTED] issued in the Dominican Republic on April 4, 1993; a Petition for Alien Relative (Form I-130), filed by [REDACTED] on behalf of [REDACTED] on November 18, 1993, and approved by the former Immigration and Naturalization Service (INS) on June 30, 1995; a written confession by [REDACTED], sworn before a U.S. Embassy Investigator on October 3, 1996; a Notice of Intent to Revoke the Petition for Alien Relative filed by [REDACTED] on behalf of [REDACTED], issued by the INS on February 20, 1999; a divorce decree for [REDACTED] and [REDACTED], issued in the Dominican Republic on July 6, 2001; a marriage certificate for [REDACTED] and [REDACTED], issued in the Dominican Republic on July 21, 2001; a Notice of Revocation of the Petition for Alien Relative filed by [REDACTED] on behalf of [REDACTED], issued by USCIS on April 17, 2006; a letter from a psychiatrist, dated February 28, 2007; a letter from a psychologist, dated March 1, 2007; and a letter from the applicant's husband, dated December 19, 2006.

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 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 U.S.C. § 1154(c). 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).

The record reflects that the applicant married U.S. citizen [REDACTED] on April 4, 1993. *See Marriage Certificate*. [REDACTED] filed a Petition for Alien Relative on behalf of the applicant on November 18, 1993. *See Form I-130, supra*. The former INS approved the Form I-130 on June 30, 1995. *See id.* On October 3, 1996, [REDACTED] prepared a written confession, which was sworn before a U.S. Embassy Investigator. *See Written Confession*. This document indicates that [REDACTED] married the applicant only and exclusively to help her immigrate to the United States. *Id.* [REDACTED] also noted that he married the applicant as a favor, and that he received travel money. *Id.* On February 20, 1999, the INS issued to [REDACTED] a Notice of Intent to Revoke the Petition for Alien Relative. *See Notice of Intent to Revoke, supra*. The INS proposed to revoke the approval of the petition because [REDACTED] “apparently married the beneficiary for the sole purpose of obtaining United States immigration benefits for the beneficiary.” *Id.* Specifically,

On October 3, 1996, during your investigation, you confessed in writing that you married Yobany to help her immigrate to the United States. You admitted that you did it as a favor to a friend, and that you received money for your travel expenses plus an additional five hundred dollars.”

Id. Neither party responded to the Notice of Intent to Revoke, and USCIS revoked the approval of the Petition on April 17, 2006. *See Notice of Revocation, supra.*

The applicant and [REDACTED] divorced on July 6, 2001, *see Divorce Certificate, supra*, and the applicant married [REDACTED] on July 21, 2001, *see Marriage Certificate, supra*. [REDACTED] filed a Petition for Alien Relative on behalf of the applicant on October 1, 2001, and USCIS approved the Petition on January 10, 2002. *See Form I-130, Petition for Alien Relative, supra*. In her Application for Waiver of Grounds of Inadmissibility (Form I-601), the applicant states that she married a U.S. citizen, and “stayed married for eight (8) years, but we divorced because [sic] he mistreated me.” *Form I-601*, filed Dec. 19, 2006.

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. As noted above, [REDACTED] confessed orally and in writing before a U.S. Consulate Investigator that he entered into the marriage with the applicant as a favor. *See Written Confession; Notice of Intent to Revoke*. Although the applicant stated that she stayed married for eight years and divorced [REDACTED] because he mistreated her, the applicant has provided no evidence to support this conclusory allegation. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998). Additionally, neither party attempted to rebut the Notice of Intent to Revoke. *See Notice of Revocation, supra*.

Because the applicant’s marriage 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). 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.