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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MEXICO CITY, MEXICO (SANTO DOMINGO) Date: JUN 25 2009
SDO 200 375 2015

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:

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).

Ellen C. Johnson

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 48-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 May 17, 2006. 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, through counsel, contends that the District Director erred in denying her application. *See Brief in Support of Appeal*, dated July 15, 2006. First, the applicant contends that the denial under section 204(c) of the Act was erroneous because the District Director failed to identify the evidence underlying the determination of marriage fraud. Second, the applicant claims that the District Director failed to evaluate all of the relevant hardship factors, and applied an erroneous hardship standard. Third, the applicant states that the District Director erred in failing to consider the severity of the penalty for misrepresentation and congressional intent favoring family unity in misrepresentation cases.

The record contains, *inter alia*, a divorce decree for and issued in the Dominican Republic on February 21, 1990; a marriage certificate for and , issued in the Dominican Republic on December 17, 1994; a Form I-130, Petition for Alien Relative, filed by s on behalf of on June 17, 1996, and approved by USCIS on October 1, 1996; a divorce decree for and , issued in the Dominican Republic on April 1, 1997; a Notice of Intent to Revoke the Form I-130 filed by on behalf of issued by the former Immigration and Naturalization Service (INS) on June 9, 2000; a divorce decree for and issued in the Dominican Republic on December 13, 2000; a marriage certificate for and issued in the Dominican Republic on March 1, 2001; a Notice of Revocation of the Form I-130 filed by on behalf of s, issued by the INS on October 18, 2001; a declaration from dated July 10, 2006; a letter from the couple's son , dated February 15, 2006; a letter from the couple's son dated June 2, 2006; a declaration from the couple's daughter dated July 10, 2006; and a Brief on Appeal, dated July 15, 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.[1]

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 first married the petitioner, on May 25, 1985. *See Form G-325A, Biographic Information.* The applicant and her husband have three children, born in 1986, 1988, and 1992. *See Form I-130, Petition for Alien Relative*, filed on Jan. 22,

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[1] The record also contains a nine-page letter from , dated February 14, 2006. However, this letter is in Spanish, and is not accompanied by an English translation. Accordingly, the letter is not considered in this appeal. *See* 8 C.F.R. § 103.2(b)(3) (requiring all documents containing a foreign language to be accompanied by a certified English language translation).

2002. The couple divorced on February 21, 1990. *See Divorce Decree for* *and* *supra*. On December 17, 1994, the applicant married a native and citizen of the United States. *See Marriage Certificate for* *and* *supra*. filed a Form I-130, Petition for Alien Relative, on behalf of on June 17, 1996. *See Form I-130, supra*. USCIS approved the Form I-130 on October 1, 1996. *See id.*

On June 9, 2000, the INS issued a Notice of Intent to Revoke the Form I-130 filed by on behalf of the applicant. *See Notice of Intent to Revoke, supra*. The INS proposed to revoke the approval of the petition "because it appears that the marriage between the petitioner and the beneficiary is fraudulent." *Id.* Specifically,

> The evidence (photos) appeared unconvincing. The petitioner and beneficiary's responses differed in who served as best man and maid of honor in their wedding, where they spent their honeymoon, and how long it lasted. They knew little about each other's families. They also disagreed in how often they spoke by phone.

Id. Based on the above, the INS concluded that there was "no petitionable relationship between the beneficiary and petitioner." *Id.* Neither party responded to the Notice of Intent to Revoke, and the INS revoked the approval of Form I-130 on October 18, 2001. *See Notice of Revocation, supra.*

and the applicant divorced on December 13, 2000. *See Divorce Decree for* *and* *supra*. The applicant remarried on March 1, 2001. *See Marriage Certificate for* *and* *supra*. filed a Form I-130, Petition for Alien Relative, on behalf of the applicant on January 22, 2002. *See Form I-130, Petition for Alien Relative, supra*. USCIS approved the Form I-130 on September 1, 2003. *See id.*

An independent review of the record establishes substantial and probative evidence that the applicant's marriage to was entered into for the purpose of evading the immigration laws. As noted above, the applicant and provided differing responses to questions regarding their wedding, their honeymoon, and how often they spoke with each other by phone. *See Notice of Intent to Revoke, supra*. Further, both parties knew little about each other's families. *Id.* 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.