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

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412

FILE:

Office: FRESNO, CA

Date: **MAY 15 2009**

IN RE:

Applicant:

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:

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Fresno, California, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, as the waiver application is moot.

The record reflects that the applicant is a native and citizen of India who was found to be ineligible for any relief under the Immigration and Nationality Act (the Act) pursuant to section 204(c) of the Act, 8 U.S.C § 1154(c) as an alien who entered into a marriage for the purpose of evading immigration laws.

Section 204(c) the Act provides that no petition shall be approved if 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, 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.¹

The United States Code of Federal Regulations, Title 8, Section 204.2(a)(1)(C) further clarifies that:

(ii) Fraudulent marriage prohibition. Section 204(c) of the Immigration and Nationality Act (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.

On February 11, 2000, the District Director, New York denied a Form I-130 Petition for Alien Relative (Form I-130), filed on October 4, 1996 by the applicant's current spouse. This Form I-130 and its corresponding decision are found in the applicant's record under Alien Number [REDACTED]. In this decision, the director stated that he was denying the I-130 application because the applicant had been denied adjustment of status on April 22, 1987 after a "Stokes" interview. The director

¹ The AAO notes that counsel indicates that section 212(i) of the Act will cure the applicant's inadmissibility based on the "misrepresentation" he made when he attempted to adjust status based on what the former Immigration and Naturalization Service determined was a fraudulent marriage. However, ineligibility due to marriage fraud is distinguished from inadmissibility due to misrepresentation under section 212(a)(6)(C), as it is separately addressed in section 204(c) of the Act, which states that those who engage in such fraud in an attempt to gain an immigration benefit are prohibited from having a visa petition approved. *See above.* Because the applicant engaged in marriage fraud, he is not eligible to obtain approval of a visa petition. Waivers of inadmissibility under section 212(i) of the Act cure inadmissibility under section 212(a)(6)(C), a separate issue. No purpose would be served in adjudicating a waiver of inadmissibility pursuant to section 212(i) of the Act as the applicant is ineligible for approval of the underlying petition.

further stated that testimony given by the applicant during that interview lead the Service to conclude that the applicant had entered into a marriage with his former spouse for the sole purpose of obtaining an immigration benefit. The director referred to section 204(c) of the Act in stating that because the applicant had entered into a fraudulent marriage for the purpose of gaining an immigration benefit previously, he could not approve the current Form I-130 application.

On January 16, 2007, the applicant's current spouse filed a second Form I-130 for the applicant. This application and its corresponding decision are found in the applicant's record under Alien Number [REDACTED]. The Field Office Director, Fresno, California office denied this second Form I-130 on May 16, 2007. In doing so, the director reiterated the finding made by the District Director, New York, referring to the applicant's prior denial for adjustment of status on the basis that the applicant had previously entered into a marriage for the sole purpose of obtaining an immigration benefit. Therefore, the Field Office Director, Fresno also found that the applicant's Form I-130 could not be approved pursuant to Section 204(c) of the Act.

The viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on an adjustment of status application that is, in turn, based on an approved Form I-130, Petition for Alien Relative. In the absence of an underlying approved Form I-130, Petition for Alien Relative, the Form I-601, Application for Waiver of Grounds of Inadmissibility, is moot. The appeal of the denial of the waiver must therefore be dismissed.

ORDER: The appeal is dismissed, as the underlying application is moot.