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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[redacted]

FILE: [redacted] Office: MANILA Date: OCT 13 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the 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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for further proceedings consistent with this decision.

The applicant is a native and citizen of Fiji who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i), for having been unlawfully present in the United States for a period of more than one year, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for engaging in marriage fraud to procure an immigration benefit. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i) respectively, in order to reside in the United States with her U.S. citizen spouse.

The record reflects that in 1991, the applicant's brother arranged to have a U.S. citizen, marry the applicant for the purpose of obtaining immigration benefits. The marriage occurred on September 3, 1991, but apparently refused to complete the immigrant petition process for the applicant and the couple separated. They were divorced on January 17, 1992. The record reflects that the applicant then asked her brother to arrange another marriage with a U.S. citizen. On March 6, 1996, the applicant married her current spouse, [redacted], also a U.S. citizen. The applicant's spouse filed a Form I-130 Petition for Alien Relative, and this petition was approved on May 24, 1996. In her interview for an immigrant visa, the applicant disclosed the details of her first marriage. USCIS revoked the approved Form I-130 on October 21, 1998 on the basis that the applicant's marriage to her spouse was entered into for immigration purposes only.

On or about March 9, 1999, the applicant was admitted to the United States on a B-2 visa, which authorized her to remain in the country under September 8, 1999. The applicant's husband filed a second Form I-130 for the applicant on August 10, 1999. The applicant also filed a Form I-485 Application to Register Permanent Residence or Adjust Status and a Form I-601 Application for Waiver of Ground of Inadmissibility. The petition and applications were denied in February 2001 on the basis that, pursuant to section 204(c) of the Act, 8 U.S.C. § 1154, no alien relative petition can be approved for an alien that has entered into a marriage for the purpose of evading the immigration laws. The applicant's spouse appealed the decision, but the denial was affirmed by the Board of Immigration Appeals (BIA) on February 7, 2002. On January 1, 2003, the applicant was granted voluntary departure until May 29, 2003. The applicant departed the United States on May 24, 2003.

The applicant's spouse filed a third Form I-130 for the applicant on October 24, 2005, and this application was approved on March 6, 2006. On October 3, 2007, a consular officer found the applicant inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act. On or about March 10, 2008, the applicant filed a Form I-601 Application for Waiver of Grounds of Inadmissibility.

In a decision dated January 6, 2009, the director concluded that the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from February 3, 2001 to May 24, 2003, and section 212(a)(6)(C)(i) of the Act for the aforementioned marriage fraud. The director denied the Form I-601 as moot because the Form I-130 was "improvidently approved," as section 204(c) of the Act forbids alien relative classification for aliens that have engaged in marriage fraud. The applicant appealed the denial to the AAO.

The applicant also filed suit in the United States District Court for the Western District of Washington seeking a writ of mandamus directing USCIS to refer the approved Form I-130 to the issuing service center for full revocation proceedings. *See* Order Granting Defendants' Motion to Dismiss, (September 21, 2009). The court granted the government's motion to dismiss on the basis that the applicant failed to show that she had "no other adequate remedy." *Id.* at 5. The court noted that the applicant had not shown that the AAO "is unable to consider [the applicant's] claims or is unable to refer the I-130 petition to the California Service Center for revocations proceedings." *Id.*

Section 204(c) of the Act provides that no alien relative 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 [Secretary] to have been entered into for the purpose of evading the immigration laws or

(2) the Attorney General [Secretary of Homeland Security] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

No waiver is available for violation of section 204(c) of the Act.

There is evidence in the record demonstrating that the applicant entered into her marriages for the purpose of evading the immigration laws. The first Form I-130 petition filed by the applicant's spouse was revoked on the basis of this evidence, and the second Form I-130 petition filed by the applicant's spouse was also denied, a denial that was affirmed by the BIA. Should the AAO make a determination that the applicant is to be granted a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act only to have the approved Form I-130 petition subsequently revoked on the basis of the applicant's ineligibility under section 204(c) of the Act, the waiver would have no effect.

Therefore, the AAO remands the matter to the director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approval of the Form I-130 be revoked, the director will issue a new decision dismissing the applicant's Form I-601 as moot. In the alternative, should it be determined that the applicant is not subject to section 204(c) of the Act, and that the Form I-130 is not to be revoked, then the director will issue a new decision addressing the merits of the applicant's Form I-601 waiver application. If that decision is adverse to the applicant, it will be certified for review to the AAO.

ORDER: The matter is remanded to the director for further proceedings consistent with this decision.