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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
and Immigration
Services

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SEP 21 2009

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

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 waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Dominican Republic. On May 14, 1987, the applicant divorced her first husband, [REDACTED] a native and citizen of the Dominican Republic, in the Dominican Republic. On July 21, 1992, the applicant entered the United States on a B-2 nonimmigrant visa with authorization to remain in the United States until January 20, 1993.

On July 4, 1993, the applicant married her second husband, [REDACTED] a United States citizen, in New York. On November 18, 1993, the applicant's United States citizen husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On March 10, 1995, the applicant's Form I-130 was denied based on marriage fraud. On April 7, 1995, the applicant's Form I-485 was denied.

On May 12, 1995, the applicant's United States citizen husband filed another Form I-130 on behalf of the applicant. On October 25, 1995, the applicant filed another Form I-485. On April 23, 2001, the applicant's naturalized United States citizen daughter filed a Form I-130 on behalf of the applicant. On August 7, 2001, the applicant's Form I-130 filed by her daughter was approved. On February 14, 2002, the applicant filed another Form I-485. On December 27, 2002, the applicant divorced her second husband, [REDACTED], in the Dominican Republic.

The applicant claims to have entered a common-law marriage with her first husband, [REDACTED] in January 2006. On August 21, 2006, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On March 8, 2007, the applicant's Form I-130 approval was revoked based on marriage fraud. On March 26, 2007, the applicant, through counsel, filed an appeal with the Board of Immigration Appeals (Board) of the Form I-130 revocation. On March 8, 2007, the Director, California Service Center, denied the applicant's Form I-485, finding that since the applicant's Form I-130 was revoked, the applicant was ineligible for adjustment of status. On the same day, the Director denied the applicant's Form I-601, finding no underlying petition to support the Form I-601. On April 3, 2007, the Director considering the appeal as a motion to reopen, reopened the applicant's Form I-130 revocation. On April 6, 2007, the applicant, through counsel, filed an appeal with the AAO of the Form I-601 denial. On April 10, 2007, Director revoked the applicant's Form I-130 based on marriage fraud. On April 26, 2007, the applicant, through counsel, filed an appeal with the Board of the Form I-130 revocation.

On appeal, the applicant, through counsel, contends that "[t]he Service has not considered the substantial evidence submitted on behalf of the I-601 and has denied the Applicant her due process rights to adjudication of this application of her I-485 application to adjust." *Form I-290B*, filed April 6, 2007.

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 [now the Secretary of Homeland Security, "Secretary"] to have been entered into for the purpose of evading the immigration laws, or (2) the [Secretary] 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). United States Citizenship and Immigration Service (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 AAO notes that USCIS determined that the applicant committed marriage fraud with her second husband. Therefore, the applicant is subject to the provisions of section 204(c) of the Act, and is statutorily ineligible for a waiver of inadmissibility or the approval of any petition. Additionally, the AAO finds that since the applicant's Form I-130 was revoked, there is no underlying petition to support the applicant's Form I-601; therefore, the Director properly denied the applicant's Form I-601 and the appeal will be dismissed.

ORDER: The appeal is dismissed.