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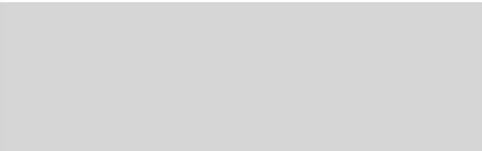
Date: **JUN 05 2015**

FILE #: [REDACTED]  
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

PETITION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Oakland Park, Florida, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for further action.

The record establishes that in November 2009, the applicant's then U.S. citizen wife filed a Form I-130, Petition for Alien Relative (Form I-130) on his behalf. A Form I-485, Application to Register Permanent Residence or Adjust Status ((Form I-485) was concurrently filed. On January 25, 2011, the applicant's Form I-485 was denied because the field office director found that the marriage between the applicant and his then U.S. citizen spouse was a sham or fraudulent marriage and such a marriage could not convey immigration benefits. The applicant and his then U.S. citizen wife subsequently divorced.

In May 2013, the applicant's current U.S. citizen wife filed a Form I-130 on the applicant's behalf which was approved in May 2014. The Field Office Director found the applicant to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly.

On appeal, counsel asserts that extreme hardship to the applicant's qualifying relatives has been established. Counsel further contends that the record does not establish that the applicant's marriage to his first wife was fraudulent. The entire record was reviewed and considered in rendering 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 C.F.R. § 204.2(a)(ii) 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.

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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

Because the applicant's marriage to his first wife was found to have been a sham or fraudulent marriage, the applicant may be permanently barred from approval of an immigrant visa petition. *See* 8 U.S.C. § 1154(c). In light of this permanent bar, no purpose would be served in addressing the applicant's contentions regarding his eligibility for an extreme hardship waiver of inadmissibility under section 212(i) of the Act.

Pursuant to 8 C.F.R. § 205.2, the approval of an I-130 petition is revocable when the necessity for the revocation comes to the attention of the Service. Therefore, we remand the matter to the field office director to commence proceedings for the revocation of the approved Form I-130 petition filed on behalf of the applicant by his current U.S. citizen wife. Should the approved Form I-130 petition be revoked, the field office director shall issue a new decision dismissing the applicant's Form I-601 as unnecessary and no further action by this office will be necessary. 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 field office director shall 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 this office pursuant to 8 C.F.R. § 103.4.

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