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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: JAN 26 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Officer in Charge, Frankfurt, Germany. The matter 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 Egypt who entered the United States on December 28, 1991, using an A-3 visa with authorization to remain for the duration of his status. On June 15, 1992, the applicant married [REDACTED], a U.S. citizen. On August 7, 1992, [REDACTED] filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. On September 29, 1992, [REDACTED] withdrew the petition "on the basis of not living together. We have never lived together." The applicant and [REDACTED] divorced on July 13, 1993. In July 1994, the applicant violated his status by accepting unauthorized employment. On September 17, 1999, the applicant married his current wife, [REDACTED]. On December 27, 1999, [REDACTED] filed a Form I-130 on the applicant's behalf. On June 4, 2002, the Form I-130 was denied after the District Director concluded that the applicant's first marriage to [REDACTED] was a fraudulent marriage entered into for the purpose of circumventing the immigration laws. *Decision of the District Director*, dated June 4, 2002. The applicant appealed the denial to the Board of Immigration Appeals, which concluded that it lacked jurisdiction to review the appeal. *Decision of the Board of Immigration Appeals*, dated August 23, 2002. The applicant and [REDACTED] left the United States in July 2004. In April 2006, the applicant applied for a visa to enter the United States and filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The officer in charge found that the I-130 was properly denied and, therefore, there was no "qualifying family relationship" to support a claim of extreme hardship. The officer in charge denied the application accordingly. *Decision of the Officer in Charge*, dated October 23, 2006.

On appeal, the applicant requests to return to the United States because of his wife's health issues and to reunite with his family.

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. It is undisputed that the applicant's Form I-130 petition was denied on June 4, 2002. 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 as moot.

Furthermore, section 204(c) of the Act, 8 U.S.C. § 1154(c), 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.

Although the applicant's current marriage to [REDACTED] may be a bona fide marriage and the AAO is sympathetic to the family's circumstances, section 204(c) of the Act, 8 U.S.C. § 1154(c), does not allow for any discretionary determinations. Therefore, because the applicant's first marriage was found to have been entered into for the purpose of evading the immigration laws of the United States, the applicant is barred from obtaining a visa to enter the United States. Section 204(c) of the Act, 8 U.S.C. § 1154(c). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.