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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**



H5 H2

FILE:



Office: MEXICO CITY (SANTO DOMINGO)

Date: FEB 22 2010

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act (INA), 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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Mexico City, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The record shows that the applicant is a native and citizen of the Dominican Republic, the husband of a United States (U.S.) citizen, and the beneficiary of an approved Form I-130 petition. The district director found that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having sought to procure a visa by fraud or willfully misrepresenting a material fact. The district director also found that, pursuant to section 204(c) of the Act, because the applicant had sought to be accorded immediate relative status based on a sham marriage, no petition for the applicant may be approved.

The applicant seeks a waiver of inadmissibility pursuant to section 212(i)(1) of the Act in order to reside in the United States with his wife and daughter. The district director also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the waiver application. On appeal, counsel stated that the finding that the applicant did not show extreme hardship was in error.

Section 212(a)(6)(C)(i) of the Act provides,

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The record contains a Form I-130, Petition for Alien Relative, signed by [REDACTED] on August 3, 1982 and filed on December 6, 1982, stating that [REDACTED] and the applicant were then married, and asking that he therefore be granted an immigrant visa.

The record contains a marriage certificate showing that, on March 3, 1973 the applicant married [REDACTED]

The record contains a birth certificate issued in [REDACTED] showing that the [REDACTED], born December 13, 1973 is the legitimate daughter of the applicant and [REDACTED]

Further, the record contains a memorandum from the U.S. Embassy in Santo Domingo that states that the birth certificate of [REDACTED] shows her to be the legitimate child of the applicant and [REDACTED] who is the true wife of the applicant. That birth certificate, however, is not in the record.

On the Form I-601 waiver application, the applicant stated that he was filing for waiver of inadmissibility because, "... when [he] applied for an Immigrant [sic] visa through [his] second wife in 1982 [he] had not been finally divorced from [his] first [sic] wife."

Finally, the record contains a statement signed by the applicant, written in his own hand, and dated February 15, 1984, with an English translation, stating, "The purpose (of his marriage to [REDACTED] [REDACTED] was for her to help me get my U.S. residency."

The record shows that the applicant was refused an immigrant visa at the American Embassy Consular Section in Santo Domingo, Dominican Republic pursuant to section 212(a)(6)(C)(i) of the Act, because the visa application relied upon a marriage that was determined to be a sham. On appeal, counsel and the applicant have not contested the finding that the applicant is inadmissible pursuant to that section. The AAO therefore affirms the finding of the district director that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa by fraud or by willfully misrepresenting a material fact.

Waiver of inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act is available pursuant to Section 212(i)(1) of the Act. Ordinarily in a case of fraud or misrepresentation, the decision would hinge upon that waiver section.

However, 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.

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 same evidence relied upon to show that the applicant is inadmissible under section 212(a)(6)(C)(i) also suffices to show that, pursuant to section 204(c) of the Act, no petition for the applicant may be approved.

The evidence is sufficient to show that the applicant entered into a sham marriage for the purpose of evading U.S. immigration laws and is therefore ineligible to adjust status pursuant to section 204(c) of the Act.

Because the applicant's marriage was found to have been entered into for the purpose of evading the immigration laws of the United States, the applicant is permanently barred from obtaining a visa to enter the United States. *See* 8 U.S.C. § 1154(c). No waiver is available for this bar pursuant to

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section 204(c) of the Act. In light of this permanent and unwaivable bar, no purpose would be served by addressing the applicant's contentions regarding his eligibility for an extreme hardship waiver of inadmissibility under section 212(i)(1) of the Act, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.