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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FILE: [redacted] Office: PANAMA CITY, PANAMA Date: MAR 05 2010

IN RE: Applicant: [redacted]

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: 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).

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Panama City, Panama, 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 record reflects that the applicant is a native and citizen of Guyana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain a visa through fraud. The record indicates that the applicant is married to a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her husband.

The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, the applicant's spouse asserts that he is "a very sick person" and is afraid to live by himself in the United States. He states that if he has to return to Guyana he would feel "more stressed and depressed to start all over again."

In support of the application, the record contains, but is not limited to, medical documentation and letters from the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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.

In denying the waiver application, the director noted that on March 21, 1999 the applicant filed a visa application claiming her deceased husband, [redacted] as the sponsor. The director stated, "On March 19, 1999 [redacted] died. On March 21, 1999 you applied for a visa with [redacted] as your sponsor." The director concluded that the applicant's visa was denied because she was "found to have committed fraud in attempting to use a deceased sponsor" for her visa application. The director determined that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for this reason.

The AAO notes that it maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo

authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO finds under its de novo review that the basis of inadmissibility as articulated by the director is not demonstrated in the record of proceedings. There is no information in the record to support a finding that the applicant is inadmissible for having "committed fraud in attempting to use a deceased sponsor" for her visa application. However, U.S. government sources do reveal that the applicant is inadmissible under section 212(a)(6)(C)(i) for other reasons that were not articulated by the director. U.S. government records indicate that the applicant was the beneficiary of an approved Form I-130 petition filed by her second husband, [redacted] The applicant applied for an immigrant visa at the U.S. Consulate in Georgetown based on the underlying approved Form I-130 petition. On February 16, 1999, the U.S. Consulate concluded that the applicant's marriage to [redacted] was for the purpose of obtaining an immigrant visa and returned the applicant's file to the New York District Office. On January 28, 2000, the New York District Office revoked [redacted] approved Form I-130 petition after a determination that his marriage to the applicant was not bona fide.

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
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> (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.

The record reflects that the applicant married her third husband, [redacted], a naturalized U.S. citizen, on December 22, 2003. On May 17, 2004, [redacted] filed a Form I-130 petition on behalf of the applicant. On November 9, 2005, the Vermont Service Center approved [redacted] Form I-130 petition. Since the first Form I-130 petition filed on behalf of the applicant was revoked because she entered the marriage "for the purpose of evading immigration laws," she is subject to section 204(c) of the Act, and is no longer eligible to be a beneficiary of an alien relative petition. Accordingly, the Vermont Service Center approved the second Form I-130 petition filed on behalf of the applicant in error.

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 should issue a new decision further explaining the basis, if any, of the applicant's inadmissibility, and 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.