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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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FILE:



Office: SANTO DOMINGO

Date:

MAY 19 2010

IN RE:



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 PETITIONER:

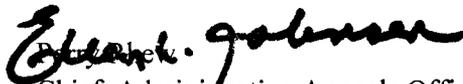


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Elizabeth J. Johnson
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure an immigration benefit by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to return to the United States and reside with his spouse.

The field office director concluded that the applicant did not qualify for an immigrant visa because the approval of an immigrant petition on his behalf is statutorily precluded because he was previously found to have entered into a marriage for the purposes of evading the immigration laws. *See Decision of the Field Office Director* dated May 20, 2009.

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 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.

On appeal, counsel for the applicant asserts that the decision of U.S. Citizenship and Immigration Services (USCIS) was arbitrary and capricious and erred as a matter of law. *See Notice of Appeal to the AAO (Form I-290B)*. Counsel contends that the applicant's prior marriage was valid and further states that USCIS erred in determining that no waiver was available to the applicant as a result of the purported marriage fraud. *See Notice of Appeal to the AAO*. Counsel asserts that the authority to determine if a marriage fraud has occurred and to subsequently deny an immigrant visa petition

belongs solely to the Attorney General, and the Attorney general has made no such determination. Counsel contends that the applicant's wife would suffer extreme hardship if the waiver application were denied, and in support of the appeal submitted documentation including photographs of the applicant's first wedding, affidavits concerning his first marriage, and documents related to the applicant's stillborn daughter and the emotional effects of the loss of the baby on his wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

Counsel contends that the applicant's prior marriage was valid and further contends that no determination was made by the Attorney General that marriage fraud had occurred. The AAO notes that at the time the prior petition for alien relative was submitted, the legacy Immigration and Naturalization Service (INS), authorized to act on the Attorney General's behalf, would have made such a determination. Since the creation of the Department of Homeland Security (DHS) in 2003, the determination is the responsibility of the Secretary, DHS, or as in the case here, the field office director acting on the Secretary's behalf.¹ As noted in the decision of the field office director, the INS issued a Notice of Intent to revoke the petition to the applicant's former wife stating that their marriage had been determined to be fraudulent. The Notice of Intent to Revoke states,

It has now come to the attention of this Service that you apparently married the beneficiary for the sole purpose of obtaining United States immigration benefits for the beneficiary. This conclusion is based upon the following information which was disclosed in an investigation.

The applicant, [REDACTED] confessed in writing that he married for the sole purpose of obtaining legal residency in the Untied States. Neighbors confirm that the applicant is a single main who lives alone.

The applicant's former wife did not respond to the Notice of Intent to Revoke. Counsel states that the applicant has no recollection of writing or signing a statement admitting he married his first wife solely to obtain an immigration benefit, but the record contains the statement, in Spanish and signed by the applicant, dated February 4, 1999.

The viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on an immigrant visa application that is, in turn, based on an approved Form I-130, Petition for Alien Relative. Although the applicant's current Petition for Alien Relative was approved, its approval was statutorily precluded due to the previous determination that he had entered into a marriage for the sole purpose of obtaining an immigration benefit.

¹ Section 1517 of the 2002 Homeland Security Act provides:

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 1502) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

The applicant is precluded from approval of an immigrant visa petition which renders the Form I-601, Application for Waiver of Grounds of Inadmissibility, moot. Accordingly, the appeal will be dismissed as there would be no purpose served in granting a waiver of inadmissibility.

ORDER: The appeal is dismissed.