

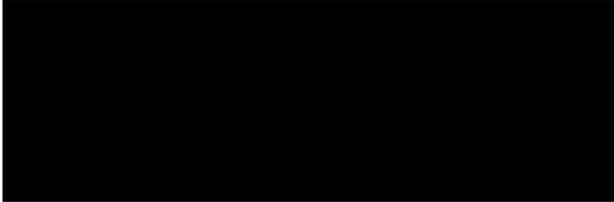
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:  Office: SANTO DOMINGO Date: **NOV 23 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, Dominican Republic and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO's decision will be withdrawn and the matter remanded to the Director, Vermont Service Center for revocation of the current Form I-130, Petition for Alien Relative, underlying the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, if appropriate.

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 reside with his spouse in the United States.

The Field Office Director concluded that the approval of an immigrant visa petition on the applicant's behalf was statutorily precluded under section 204(c) of the Act because he had previously entered into a marriage for the purposes of evading U.S. immigration laws. *Decision of the Field Office Director* dated May 20, 2009.

On appeal, counsel asserts that the USCIS decision was arbitrary and capricious and incorrect as a matter of law. Counsel asserts that the authority to determine if marriage fraud has occurred and to subsequently deny an immigrant visa petition belongs solely to the Attorney General, and that the Attorney General has made no such determination. Counsel contends that the applicant's prior marriage was valid and further states that applicant has no recollection of writing or signing a statement admitting he married his first wife solely to obtain an immigration benefit. *Form I-290B, Notice of Appeal or Motion, and Counsel's brief*, received June 17, 2009.

The AAO previously found the record to contain sufficient evidence to establish that the applicant had previously entered into a marriage solely for immigration purposes and was statutorily precluded from benefitting from the current approved Form I-130 under section 204(c) of the Act. *Decision of the Chief, Administrative Appeals Office*, dated May 19, 2010. Upon subsequent review, we observe that, although the record contains a Notice of Intent to Revoke the Form I-130 filed by the applicant's prior spouse on the basis of marriage fraud, there is no evidence that the legacy Immigration and Naturalization Service (INS) ever issued a final decision in the applicant's case. Accordingly, the AAO withdraws our finding that the section 204(c) of the Act applies in this matter.

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.

8 C.F.R. § 204.2(a)(ii).

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, however, 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).

In the present matter, the record reflects that legacy INS issued a Notice of Intent to Revoke the Form I-130 filed by the applicant's former wife, stating that the marriage had been determined to be fraudulent. The Notice of Intent to Revoke stated,

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 United States. Neighbors confirm that the applicant is a single man who lives alone.

Although counsel contends that the applicant does not remember admitting to having married his first wife solely for the purpose of immigrating to the United States, the record contains a February 5, 1999 investigation report from the American Embassy in Santo Domingo and a signed February 4, 1999 statement from the applicant, both of which indicate that the applicant's purpose in marrying his prior wife was to enter the United States as a lawful permanent resident. Copies of both the investigation report and the applicant's statement are included as attachments to this decision.

Pursuant to 8 C.F.R. § 205.2, the approval of a Form I-130 petition is revocable when the necessity for revocation comes to the attention of USCIS. In the present case, the consular investigation report and the applicant's own statement lead the AAO to conclude that the applicant's prior marriage is within the purview of section 204(c) of the Act as a marriage entered into for the purposes of evading U.S. immigration laws. In that the applicant appears permanently barred from obtaining a U.S. immigrant visa, the AAO finds no purpose would be served in addressing his waiver application at this time. The AAO will, therefore, remand the matter to the Director, Vermont Service Center, who approved the current Form I-130, to initiate proceedings for the revocation of the approved Form I-130 petition, if appropriate.

Should the current approved Form I-130 petition underlying the applicant's Form I-601 waiver application be revoked, the Director shall 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 shall return the applicant's Form I-601 waiver application to the AAO for consideration on its merits.

ORDER: The matter is remanded to the Director for further processing consistent with this decision.

Attachments

TRANSLATION OF INVESTIGATION REPORT

CONSULAR SECTION, AMERICAN EMBASSY
Santo Domingo, Dominican Republic

Date of Investigation: 02-04-99

Date of Report: 02-05-99

Name: [REDACTED]

Investigation Report: [REDACTED]

Case No.: [REDACTED]

Petitioner: [REDACTED]

Applicant confessed in writing that he married petitioner with the only purpose entering the U.S. as a legal resident.

Applicant said that petitioner hasn't visited since the time she arrived to the Dominican Republic, which was over two years ago. Added, that she doesn't write him and that he didn't have any type of evidence regarding their relationship as a married couple.

The following neighbors, all of them are from the same street, were interviewed: [REDACTED] from house [REDACTED] and [REDACTED]. They all said they knew applicant as a single man, and added that he lives alone in the room where I found him.

Evidences: Written and signed confession by applicant.

Investigated By:

I [REDACTED] Chief of Investigations, certify that under my best knowledge, this is a correct and faithful translation of the original document attached herewith.

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Embassy of the United States of America

Yo, Alfredo Ferrero Vilomar
(BENEFICIARIO)

Cedula Personal de Identidad No. 001-0411234 Serie 9

Confieso que me case con Wanglia Senteno
(PETICIONARIO)

Unicamente con el proposito de entrar a los Estados Unidos de Norteamerica
como Residente Legal.

Firma Alfredo Ferrero Vilomar

Suscrito y jurado por ante mi, en fecha 4 febrero 1999

Plantara
Consulate Investigator
United States of America