

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



tt5

OCT 27 2010

FILE: [REDACTED] Office: MEXICO CITY (SANTO DOMINGO) Date:

IN RE: [REDACTED]

PETITION: 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Acting District Director for further action.

The record establishes that in October 1994, the applicant, a native and citizen of the Dominican Republic, admitted before a consulate investigator that her marriage to [REDACTED] U.S. citizen and the petitioner of the Form I-130 filed on the applicant's behalf in May 1989 and subsequently approved in August 1989, was entered into for the sole purpose of evading immigration laws to procure entry as an immigrant through the commission of fraud. The record reflects that the applicant, in two separate sworn statements provided to the consulate investigator in Spanish, her native language, confessed that she had married [REDACTED] for the sole purpose of entering the United States, and further confessed that she lived with her husband, [REDACTED] and their four kids in the same home. See *Sworn Statements, in Spanish, Signed by the Applicant*, dated October 25, 1994. The Form I-130 approval was revoked on April 8, 1998.¹ *Revocation of Petition for Alien Relative, Form I-130*, dated April 8, 1998. The revocation has not been appealed by the applicant and as such, is final.

In October 2004, the applicant's U.S. citizen daughter, [REDACTED] filed a Form I-130 on the applicant's behalf. Based on the applicant's admission in October 1994, the Acting District Director found the applicant 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), as an alien who has sought to procure a visa, other documentation, or admission to the United State through fraud or misrepresentation. Furthermore, the Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. Finally, the acting district director noted that the applicant had previously been denied an immigrant visa for marriage fraud, as outlined above. The Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Acting District Director*, dated May 13, 2008.

On appeal, counsel for the applicant submits a brief, dated June 5, 2008 and referenced exhibits. In addition, supplemental evidence in support of the instant appeal was received by the AAO in November 2009. The entire record was reviewed and considered in rendering this decision.

¹ On appeal, counsel requests copies of the documents that lead to the U.S. consulate's finding that the applicant had married [REDACTED] with the sole intent and purpose of entering the U.S. as a legal permanent resident, including copies of her signed statements referenced above, and the names and/or any information in reference to the "'four' neighbors that allegedly admitted that [REDACTED] [the applicant] was residing with [REDACTED]..." See *Form I-290B*, dated June 5, 2008. The AAO notes that it has no obligation to withhold adjudication of an appeal pursuant to a request for a copy of the record. In addition, there is no indication that counsel has filed a request for a copy of the record through the Freedom of Information Act (FOIA).

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 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).

An independent review of the record establishes substantial and probative evidence that the applicant's marriage to [REDACTED] was entered into for the sole purpose of evading the immigration laws. As noted above, the applicant confessed in writing before a U.S. consulate investigator that she entered into the marriage with [REDACTED] to circumvent immigration laws and that she continues to reside with her true husband and their children. Four neighbors corroborated this information. Because the applicant's marriage to [REDACTED] 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). As such, no purpose would be served in granting a waiver under section 212(i) of the Act as she is ineligible for any application which would allow her admission into the United States.

Pursuant to 8 C.F.R. § 205.2, the approval of an I-130 petition is revocable when the necessity for the revocation comes to the attention of the Service. Therefore, the AAO remands the matter to the acting district director to initiate proceedings for the revocation of the approved Form

I-130 petition filed on behalf of the applicant by her U.S. citizen daughter in October 2004. Should the approved Form I-130 petition be revoked, the acting district 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 acting district director will issue a new decision 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 pursuant to 8 C.F.R. § 103.4.

ORDER: The matter is remanded to the acting district director for further proceedings consistent with this decision.