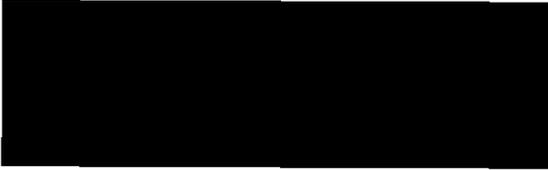


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



H5

FILE: [REDACTED]
SDO 2006 623 009

Office: SANTO DOMINGO,
DOMINICAN REPUBLIC

Date: APR 04 2011

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:

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 \$630. 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 Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for further proceedings consistent with this decision.

The record reflects that the applicant is a 66-year-old-native and citizen of the Dominican Republic 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 procure a benefit under the Act through fraud or the willful misrepresentation of a material fact: to wit, the applicant attempted to obtain an immigrant visa by entering into a marriage with a United States citizen in order to circumvent the immigration laws. The record reflects that the applicant is currently married to a Lawful Permanent Resident of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on his behalf by his U.S. citizen daughter, Sandra De La Cruz. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 7, 2009.

On appeal, the applicant's spouse asserts that she is suffering extreme hardship as a result of family separation and the denial of the applicant's waiver request. *Form I-290B*, dated February 2, 2009 and a letter from the applicant's spouse in support of the appeal, dated February 1, 2009.

The record includes, but is not limited to, letters from the applicant's spouse and daughter, a supportive statement from [REDACTED] the applicant's spouse's pastor, a statement written on a prescription form from St. Joseph's Community Care, Tampa, Florida, dated January 21, 2009, regarding the applicant's spouse, and a copy of a "Medical Expenses" statement from [REDACTED] providing a list of medications purchased for the applicant's spouse during the period from January 1, 2008 through January 23, 2009. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) In general.-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.
-
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

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).

The marriage certificate reflects that the applicant married [REDACTED] a United States citizen, on April 16, 1985. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant on June 26, 1985, which was approved on September 11, 1985. At their immigrant interview on July 20, 1987, the applicant was found ineligible for an immigrant visa for having entered into a marriage for immigration purposes. Specifically, the applicant was found to have entered into a marriage that was contrived solely to secure the applicant's admission to the United States and not to begin a life together as husband and wife. The applicant admitted on the Form I-601 application that he entered into a marriage with [REDACTED] in order to gain admission into the United States. On June 5, 1990,

the director, Eastern Service Center, St. Albans, Vermont, terminated the Form I-130 filed by [REDACTED] on the applicant's behalf. On February 23, 2003, the applicant married his current spouse, [REDACTED] a Lawful Permanent Resident of the United States, in the Dominican Republic. On September 30, 2005, the applicant's U.S. citizen daughter, [REDACTED], filed a Form I-130 on the applicant's behalf, which was approved on April 19, 2006. On September 30, 2005, the applicant was refused an immigrant visa under section 212(a)(6)(C)(i) of the Act for entering into a sham marriage with [REDACTED] for immigration purposes. The applicant filed the I-601 waiver application on September 18, 2008. On September 23, 2008, the Chief of Visa Operations, Santo Domingo, Dominican Republic, requested that the Officer-in-Charge (OIC), Santo Domingo sub-office make a determination as to whether section 204(c) applies to the applicant's case based on his prior sham marriage. It does not appear that a determination was made regarding the applicability of section 204(c) in this case. On January 7, 2009, the Field Office Director denied the Form I-601 application finding that the applicant had attempted to procure an immigration benefit by fraud or the willful misrepresentation of a material fact and had failed to establish extreme hardship to a qualifying relative. Because the record does not show that the applicant entered into his marriage to [REDACTED] in good faith and not for the purpose of evading the immigration laws of the United States, the AAO must 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 purpose of evading the immigration laws. In that the applicant's prior marriage has been found to have been entered into for the purpose of evading the immigration laws of the United States, he is permanently barred from obtaining a visa to enter the United States. *See* 8 U.S.C. § 1154(c). In light of this permanent bar, no purpose would be served in addressing the applicant's contentions regarding his eligibility for an extreme hardship waiver of inadmissibility under section 212(i) of the Act.

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 Field Office Director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the Field Office 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 Field Office 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 Field Office Director for further proceedings consistent with this decision.