

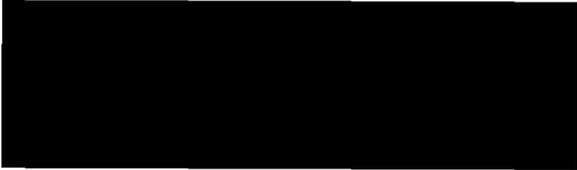
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: **DEC 07 2011**

Office: SANTO DOMINGO,  
DOMINICAN REPUBLIC

FILE:



IN RE: Applicant:



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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further processing consistent with this decision.

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 Lawful Permanent Resident (LPR) of the United States and 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 with her spouse in the United States.

The Acting Field Office Director concluded that the applicant had previously entered into a marriage for the purposes of evading U.S. immigration laws. He also determined that the applicant had failed to establish that denial of her waiver application would result in extreme hardship to her current spouse. The Acting Field Office Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Acting Field Office Director*, dated August 4, 2009.

On appeal, the applicant's spouse states that she and her first spouse were married and that he filed a Form I-130 on her behalf. She also states that she subsequently divorced him and does not know why he told the consular officer that their marriage was entered into solely for the purpose of helping her immigrate to the United States as a lawful permanent resident. *Form I-290B*, dated August 31, 2009; *see also a statement from the applicant*, dated August 31, 2009.

The record includes, but is not limited to, statements from the applicant and her spouse; a psychological evaluation of the applicant's spouse; copies of medical records relating to the applicant's spouse; a letter from the applicant's spouse's employer; a copy of Earnings and Leave Statement for the applicant's spouse; and documents relating to the applicant's prior marriage, including the immigrant visa petition based on that marriage. 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.

....

The AAO will not, however, consider whether the applicant is eligible for a waiver under section 212(i) of the Act. Although the applicant is currently the beneficiary of an approved Form I-130, we find the record before us to reflect that a prior Form I-130 benefitting the applicant was revoked by the legacy U.S. Immigration and Naturalization Service (now United States Citizenship and Immigration Services

(USCIS)) on June 11, 1997, based on a Service finding that she had entered into the underlying marriage solely for the purpose of obtaining an immigration benefit.

Pursuant to section 204(c) of the Act:

[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 [now Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General [Secretary] 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 states:

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). United States Citizenship and Immigration Services may rely on any relevant evidence in the record, including evidence from prior United States Citizenship and Immigration Services 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 AAO does not find the record to indicate that the approval of the current Form I-130 benefitting the applicant is consistent with law and regulation, given the basis for the June 11, 1997 revocation of the prior Form I-130 that was filed on her behalf. We further conclude that as the applicant may be permanently barred from obtaining a U.S. immigrant visa, no purpose would be served in addressing the issue of admissibility at this time. The AAO will, therefore, remand the matter to the Field Office Director to initiate the actions necessary to determine whether the approved Form I-130 benefitting the applicant should be revoked.

Should the current approved Form I-130 petition underlying the applicant's Form I-601 waiver application be revoked pursuant to section 204(c) of the Act, the Acting Field Office 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 should not be revoked, the Acting Field Office Director shall return the applicant's Form I-601 waiver application to the AAO for consideration on its merits.

**ORDER:** The matter is remanded for further processing consistent with this decision.