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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] Office: MEXICO CITY (SANTO DOMINGO) Date:

IN RE:



FEB 08 2011

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, 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 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 January 2002 the applicant, a native and citizen of the Dominican Republic, admitted before a consulate investigator that his marriage to [REDACTED] a U.S. citizen, was entered into for the sole purpose of entering the United States as a legal resident, and not to start a marital relationship with [REDACTED]. The record reflects that the applicant, in a sworn statement provided to the consulate investigator in Spanish, his native language, confessed that he had married [REDACTED] for the sole purpose of entering the United States as a legal resident. *See Sworn Statement, in Spanish, Signed by the Applicant*, dated January 22, 2002. A Notice of Intent to Revoke the Form I-130 requesting additional documentation with respect to [REDACTED] marriage to the applicant was issued to [REDACTED] in January 2006. [REDACTED] was given sixty (60) days to respond to the Notice. *See Notice of Intent to Revoke*, dated January 13, 2006. No response to the Notice was received by USCIS and the approval of Form I-130 was revoked on August 2, 2006. *Revocation of Petition for Alien Relative, Form I-130*, dated August 2, 2006. The revocation has not been appealed by the applicant and is therefore final.

In March 2007, the applicant's U.S. citizen spouse, [REDACTED] filed a Form I-130 on the applicant's behalf. Based on the applicant's admission in January 2002, 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 States 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, and referenced section 204(c) of the Act. The Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Acting District Director*, dated October 14, 2008.

On appeal, counsel for the applicant submits a brief and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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 C.F.R. § 204.2(a)(ii) 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 asserts that the fraud committed by the applicant was known to the USCIS when it approved the subsequent Form I-130 and states,

Once the I-130 was approved, it was arbitrary in the extreme for the USCIS to deny the I-601 on the basis that [REDACTED] was ineligible for the immigrant visa and for the approved I-130 in the first place, pursuant to INA 204(c).... To allow USCIS to deny an I-601 on the basis of a finding of inadmissibility not made by the consular officer, is not only ultra vires the limited role of USCIS in such cases, but also frustrates and usurps the proper role of the consular official.... Denying the waiver on the basis that [REDACTED] is not eligible for a visa frustrates the intent of the consular official whose role it is to make determinations of inadmissibility.... *Brief in Support of Appeal*.

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). Further, the AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains 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 he entered into the marriage with [REDACTED] for the sole purpose of entering the United States as a legal resident, and not to start a marital relationship with [REDACTED]. 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 addressing the applicant's contentions regarding his eligibility for a 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 district director to initiate proceedings for the revocation of the approved Form I-130 petition filed on behalf of the applicant by his U.S. citizen spouse in March 2007. Should the approved Form I-130 petition be revoked, the acting district 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 district director shall 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.