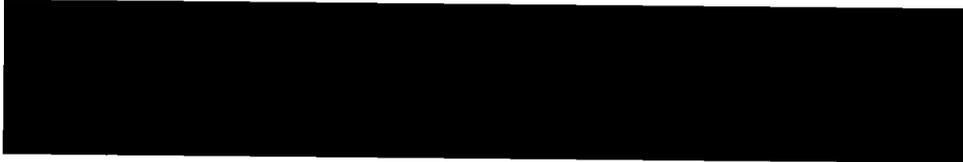


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



H5

FILE: [redacted] Office: MEXICO CITY (SANTO DOMINGO) Date: FEB 09 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the acting district director for further proceedings consistent with this decision.

The record reflects that the applicant is a 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 marriage fraud. The applicant is married to a lawful permanent resident and 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 husband and child in the United States.

The acting district director found that the applicant's previous marriage was fraudulent and entered into solely to procure a visa for the applicant to enter the United States. The director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Acting Mexico District Director*, dated November 5, 2008.

Section 204(c) of the Act provides that no alien relative petition shall be approved if:

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General [Secretary] to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General [Secretary of Homeland Security] 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). No waiver is available for violation of section 204(c) of the Act.

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 record reflects that the applicant married a lawful permanent resident, [REDACTED] on January 15, 1988. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on July 27, 1989. On July 26, 1995, the former Immigration and Naturalization Service notified [REDACTED] of its intent to revoke the previously granted Form I-130 based on a signed confession from the applicant, dated November 8, 1994, which stated that she married [REDACTED] solely to gain entrance to the United States as a legal permanent resident. In 1999, the applicant and [REDACTED] divorced.

The applicant married her current husband, [REDACTED] a lawful permanent resident, on January 31, 2001. [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant on February 4, 2002. The Form I-130 states that the applicant had not previously been married. *Petition for Alien Relative (Form I-130)*, dated January 18, 2002 (indicating “n/a” for names of prior husbands). On February 28, 2002, 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 record shows that the Form I-130 filed by [REDACTED] was approved on August 18, 2005. The applicant filed the I-601 waiver application on January 30, 2008, which was denied on November 6, 2008.

Because the record does not show that the applicant entered into her 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 to [REDACTED] 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, she 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 her 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 district director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the 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 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 district director for further proceedings consistent with this decision.