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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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FILE:  Office: SANTO DOMINGO Date: JAN 04 2011
(relates)

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:



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 Mexico District Director, (Santo Domingo) and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the District Director for further proceedings.

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), for having sought to procure a visa by fraud or a misrepresentation. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen wife.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The director noted that on April 10, 2001, the applicant signed a written confession stating that he had entered into a prior marriage which was fraudulent and was entered into for immigration purposes. The director also noted that the Form I-130 petition filed on behalf of the applicant by his former spouse was revoked for marriage fraud on July 15, 2005. *Decision of the Acting District Director*, dated June 16, 2008.

On appeal, counsel states that applicant "should have been given an opportunity to rebut the Service's conclusion that his marriage [to this prior spouse] was fraudulent." Counsel does not submit additional evidence. *See, Form I-290B and attachments.*

It is noted that counsel states on the Notice of Appeal to the Administrative Appeals Office (AAO), that a brief and/or additional evidence will be submitted within 30 days. *Form I-290B*, filed July 10, 2008. On October 15, 2010, counsel was notified that the record does not reflect receipt of a brief and/or additional evidence and counsel was provided the opportunity to resubmit evidence. However, the record does not reflect receipt of additional evidence. Therefore, the record must be considered complete.

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 record reflects that the applicant married [REDACTED] on July 28, 1994 in the Dominican Republic. Mrs. [REDACTED] filed a Petition for Alien Relative on behalf of the applicant on April 13, 1995. The legacy Immigration and Naturalization Service (INS) approved the Form I-130 on February 12, 1996. An investigation was conducted by the Department of State on March 3, 2000. After their immigrant interview on March 23, 2000, a field office investigation was conducted on April 4, 2001 to determine whether the relationship was legitimate. On May 5, 2001, the applicant and [REDACTED] were divorced. On April 4, 2001 the applicant signed a confession stating that had entered into the marriage with [REDACTED] for the sole purpose of entering the United States as a permanent resident. On July 15, 2005, the I-130 petition filed by [REDACTED] was revoked for marriage fraud. Mrs. [REDACTED] married the applicant on February 9, 2002 in the Dominican Republic. She filed the current Form I-130 on his behalf on March 23, 2002, which was approved on January 13, 2006. On February 26, 2008, 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 April 3, 2008, which was denied on June 16, 2008. Because the record does not show that the applicant entered into the marriage to [REDACTED] in good faith, 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 district director to initiate proceedings for the revocation of the current 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.