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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**



**PUBLIC COPY**



H5

Date: JUL 12 2011

Office: ACCRA

FILE: 

IN RE: 

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.

Thank you,

P/

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Accra, Ghana, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for further action.

The record establishes that in December 2005, [REDACTED], a U.S. Citizen, filed the Form I-130, Petition for Alien Relative, on behalf of the applicant, which was approved in April 2006. In December 2008, the U.S. Department of State's Fraud Prevention Unit conducted an investigation into the bona fides of the marriage between the applicant and [REDACTED]. The investigator concluded, after conducting several interviews, that the applicant was already married to a Nigerian citizen, [REDACTED], and further, that they lived as husband and wife.

As noted by the field office director, the marriage to [REDACTED] could not be legally recognizable if the applicant was married to someone else at the time of the purported marriage to [REDACTED]. The field office 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), for having attempted to obtain an immigrant visa and entry to the United States by fraud or willful misrepresentation. Further, the field office director stated that since the marriage to [REDACTED] is not legally valid due to the inability to marry him while already married to someone else, no qualifying relative exists for purposes of a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director*, dated February 15, 2011.

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

- (i) 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.

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (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 Attorney General (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...

On February 9, 2011, the USCIS-Accra returned the Form I-130 to the USCIS-Vermont Service Center, proposing revocation of the Form I-130 due to the fact that the applicant's marriage to [REDACTED] could not be valid as she was already married to someone else. To date, the USCIS-Vermont Service Center has not issued a decision on whether the Form I-130 will be revoked, as proposed by the USCIS-Accra, or reaffirmed.

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 await the results of the revocation process of the approved Form I-130 petition filed on behalf of the applicant by [REDACTED]. Should the approved Form I-130 petition be revoked, the field office director shall issue a new decision dismissing the applicant's Form I-601 as moot as the viability of the Form I-601 is dependent on an underlying approved immigrant petition. In the alternative, should it be determined that the approval of the Form I-130 is reaffirmed based on a determination that the applicant was indeed not married to anyone else at the time of her marriage to [REDACTED], then the field office director shall determine whether the applicant remains inadmissible and shall issue a new decision outlining the grounds of inadmissibility and 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.