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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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HS

DATE: **JUL 28 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.

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 Field Office Director, Santo Domingo, Dominican Republic, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 attempting to procure an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is currently 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 pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The Field Office Director found that the applicant had entered into a prior marriage for the purpose of evading the immigration laws of the United States and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated April 27, 2009.

On appeal, the applicant's spouse states that the applicant's former spouse failed to appear for the interview and that the marriage has ended in divorce; that the applicant was asked to sign some papers without knowledge of what she was signing; that the applicant has committed no crime; and that he needs the applicant to be in the United States with him. *See Form I-290B*, dated May 5, 2009.

The record includes, but is not limited to, statements from the applicant and her spouse; medical letters and records regarding the applicant's spouse; a copy of a prescription from Hospital Dr. [REDACTED] 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.

. . . .

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). United States Citizenship and Immigration Services (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 on July 16, 1988, the applicant married her first spouse, [REDACTED] a United States citizen, in El Facor, Dominican Republic. On May 16, 1991, Mr. [REDACTED] filed a Petition for Alien Relative on the applicant's behalf (Form I-130), and the Form I-130 was approved on September 4, 1991. A subsequent investigation into their relationship conducted by the Department of State found that the marriage was entered into for the sole purpose of obtaining an immigration benefit for the applicant. When confronted with this finding, the applicant admitted in writing, by a statement she completed and signed on February 1, 1993, that she had entered into her marriage with Mr. [REDACTED] for the purpose of obtaining an immigration benefit.

On June 2, 1993, the Director, Vermont Service Center, sent a Notice of Intent to Revoke (NOIR) the Form I-130 to the petitioner, Mr. [REDACTED], at his last known address of record. The notice was returned as unclaimed. The record indicates that on November 19, 1993, the Service Center terminated the I-130 pursuant to 8 C.F.R. § 103.2 and mailed the termination notice to Mr. [REDACTED] at his last known address of record. There is no evidence in the record that Mr. [REDACTED] had filed a change of address to provide the service center with a new address. The applicant was found ineligible for an immigrant visa under section 212(a)(6)(C)(i) of the Act for having entered into a marriage for immigration purposes.

On July 12, 2007, the applicant married her current spouse, [REDACTED] a United States citizen, in the Dominican Republic. On July 23, 2007, Mr. [REDACTED] filed a Form I-130 on the applicant's behalf, which was approved on February 29, 2008. On January 28, 2009, the applicant was refused an immigrant visa under section 212(a)(6)(C)(i) of the Act for having entered into a marriage with [REDACTED] solely for immigration purposes. On the same date, the applicant filed a Form I-601 waiver application. On April 27, 2009, the Field Office Director denied the applicant's Form I-601, finding that the applicant had entered into a marriage for the purpose of evading the immigration laws of

the United States and was barred from obtaining a visa to enter the United States under section 204(c) of the Act.

On appeal, the applicant submitted a statement dated May 15, 2009, in which she claims that her prior statement (in which she had acknowledged marriage fraud) was not true, that she signed the statement without reading it. The AAO notes the claims by the applicant, however, the evidence is not sufficient to overcome her prior statement made on February 1, 1993, acknowledging that she had entered into a marriage solely for immigration benefit. Any attempt to explain or reconcile inconsistencies will not suffice without competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

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 pursuant to section 204(c) of the Act, 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.