



U.S. Citizenship  
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DATE: JUN 24 2011 Office: NEW DELHI, INDIA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) , and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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 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, New Delhi, India, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded.

The applicant is a native and citizen of Pakistan who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(ii), as an alien who falsely claimed U.S. citizenship, and pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. The applicant is married to a U.S. citizen, and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility under section 212(i) of the Act in order to reside in the United States.

The field office director concluded that the applicant was statutorily ineligible for a waiver and denied the application based on an admission that the applicant had presented a Texas driver's license in order to enter the United States as a U.S. citizen. *Decision of the Director*, January 6, 2009.

The record contains inconsistent information with regard to the applicant's basis of inadmissibility. The record indicates that the applicant entered the United States in 1991 on a student visa, but violated to conditions of that visa when he failed to attend flight school and remained beyond his authorized period of stay. In 1995 the applicant married a U.S. citizen who filed an I-130 petition on his behalf. During an investigation conducted by legacy Immigration and Naturalization Service it was discovered that the applicant and his spouse did not reside together as husband and wife. The record contains a signed statement from the petitioner in that case in which the petitioner stated that the Form I-130 petition "was filed as a friend we do not live together as husband and wife." *Withdrawal of Form I-130*, dated December 3, 1996.

The applicant was placed into removal proceedings and ordered to voluntarily depart by August 24, 1999. On August 30, 1999, the applicant married his current spouse, who subsequently filed another I-130 on his behalf. The applicant was detained when he appeared at the Dallas, Texas, field office to apply for work authorization and removed on June 21, 2002, pursuant to his outstanding removal order effective November 1, 1991. In finding that the applicant was inadmissible under section 212(a)(6)(C)(ii), the Field Office Director referred to a statement by the applicant that he had falsely claimed U.S. citizenship when re-entering the United States by showing a Texas driver's license. As the applicant admitted to having falsely represented himself to be a citizen of the United States for the purpose of entering the United States, he is inadmissible under section 212(a)(6)(C)(ii) of the Act.

In addition, based on the record the AAO finds that the applicant is inadmissible pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c), for having entered into a marriage for the purpose of avoiding U.S. immigration law. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds

for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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 contains, *inter alia*, a marriage certificate for the applicant's first marriage; a Petition for Alien Relative (Form I-130), filed by the applicant's first spouse; and a withdrawal statement from the applicant's first spouse.

The applicant's first spouse filed a Petition for Alien Relative on behalf of the applicant on December 4, 1995. At their interview it was discovered that the applicant and his spouse were not residing together as husband and wife. As noted above, the applicant's spouse signed a statement that she and the applicant were friends and not living together as husband and wife and withdrew the petition. The District Director withdrew the petition on February 3, 1998, and the applicant and his spouse were divorced on May 22, 1998.

Based on the evidence in the record, the AAO determines that the applicant entered into the marriage for the purpose of evading U.S. immigration law. Section 204(c) of the Act, 8 U.S.C. § 1154(c), prohibits the approval of a visa petition filed on behalf of an alien who has entered into a marriage for the purpose of evading the immigration laws. Thus, the applicant 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 field office 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 field office director for further proceedings consistent with this decision.