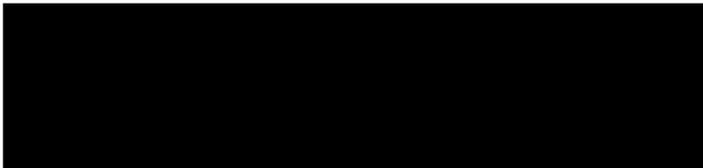


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY



HS

Date: **MAY 27 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 remanded to the Field Office 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 attempting to seek a benefit through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and the father of two United States citizen children and two Dominican citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his current wife. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 13, 2009.

On appeal, the applicant's wife states she is suffering hardship in that she is raising their two handicap children alone. *Statement from the applicant's wife*, dated March 27, 2009.

The record includes, but is not limited to, statements from the applicant and his wife in English and Spanish¹, letters of support for the applicant and his wife in English and Spanish, medical documents for the applicant's children in Spanish, school records and insurance documents for the applicant's children, marriage and divorce documents for the applicant and his wife, and documents regarding the revocation of the Form I-130 previously filed on behalf of the applicant by his ex-wife. The entire record was reviewed and considered, with the exception of the Spanish language statements and documents, 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)

¹ Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a statement from the applicant's wife, letters of support, and medical documents are in Spanish and are not accompanied by English-language translations, the AAO will not consider these documents in this proceeding.

a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

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

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 [Secretary] to have been entered into for the purpose of evading the immigration laws, or (2) the [Secretary] 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 establishes that on January 22, 1995, the applicant married his first wife, [REDACTED] Hernandez, a lawful permanent resident, in the Dominican Republic. The applicant's wife filed a Form I-130 on behalf of the applicant, which was approved on March 1, 1996. On January 26, 2001, the applicant's wife claimed her marriage to the applicant was entered into for immigration purposes, and withdrew the I-130 immigrant visa petition. On December 16, 2003, the applicant and his first wife divorced. On January 6, 2005, the applicant married his second wife, [REDACTED] a United States citizen, in the Dominican Republic.² On August 22, 2005, the applicant's wife filed a Form I-130 on behalf of the applicant. On September 22, 2005, the applicant's second Form I-130 was approved. On March 6, 2008, the applicant filed a Form I-601 based on his inadmissibility under section 212(a)(6)(C)(i) of the Act. On June 17, 2008, the Acting Center Director, Vermont Service Center, revoked the approval of the applicant's first Form I-130. On March 13, 2009, the Field Office Director denied the applicant's Form I-601, in part, based on a finding that the applicant entered into a marriage for immigration purposes. The evidence is sufficient to show that the applicant entered into his marriage to [REDACTED] for the purpose of evading the immigration laws of the United States. 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 benefitting from a Form I-130 petition filed by a subsequent spouse or family member. *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 USCIS. 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 Field Office 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 Field Office 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.

² The AAO notes that the applicant and his second wife have two children, who were born on July 18, 1995 and October 14, 1989.