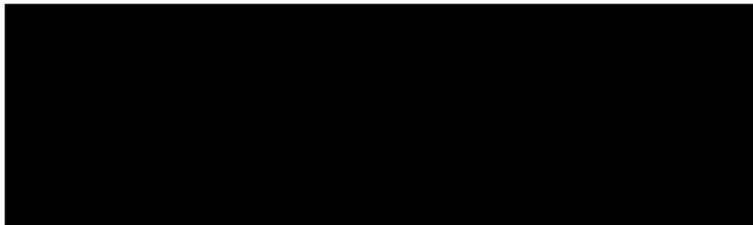


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prevent clearly unwarranted
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC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



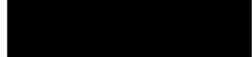
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Date: **SEP 01 2011**

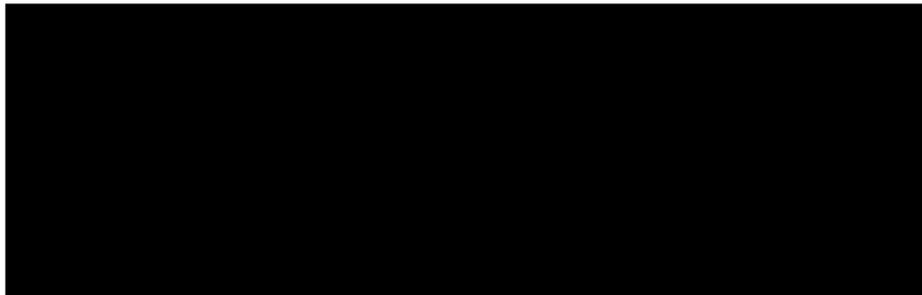
Office: SANTO DOMINGO

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.

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 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 October 1988, the applicant, a native and citizen of the Dominican Republic, was found ineligible for an immigrant visa by a consular officer because her then marriage to [REDACTED] a U.S. citizen, was deemed invalid for purposes of immigration. It was found that the sole intent of the applicant at the time of the marriage to [REDACTED] was to secure admission to the United States.

In July 1994, the applicant's U.S. citizen spouse [REDACTED] filed a Form I-130 on the applicant's behalf. 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), as an alien who has sought to procure a visa, other documentation, or admission to the United States through fraud or misrepresentation. Furthermore, the Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. Finally, the Field Office Director noted that the applicant had previously been denied an immigrant visa for marriage fraud, as outlined above, and referenced section 204(c) of the Act. The Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Field Office Director*, dated May 19, 2009.

On appeal, counsel for the applicant submits a letter, dated June 15, 2009, and documentation in support of hardship to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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 C.F.R. § 204.2(a)(ii) 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.

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). Further, the AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains substantial and probative evidence that the applicant's marriage to [REDACTED] was entered into for the sole purpose of evading the immigration laws. Because the applicant's marriage to [REDACTED] was found to have been entered into for the purpose of evading the immigration laws of the United States, the applicant is permanently barred from obtaining a visa to enter the United States. *See* 8 U.S.C. § 1154(c). As such, no purpose would be served in addressing the applicant's contentions regarding her eligibility for a 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 filed on behalf of the applicant by her U.S. citizen spouse in July 1994. 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. 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 shall 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.