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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

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Date: **SEP 02 2011** Office: SANTO DOMINGO, DOMINICAN REPUBLIC

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)

ON BEHALF OF APPLICANT:

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 mother of a United States citizen child. She is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her current husband. 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 her spouse and child.

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 May 25, 2009.

On appeal, the applicant, through counsel, claims that the decision by United States Citizenship and Immigration Services (USCIS) denying the applicant's "waiver application was erroneous because an evaluation of the record demonstrates that the positive factors in [the applicant's] favor outweigh the negative factors." *Counsel's appeal brief*, dated July 16, 2009.

The record includes, but is not limited to, counsel's appeal brief; a statement from the applicant's husband; a psychiatric letter for the applicant's husband; medical documents for the applicant's husband; household bills, insurance documents, money transfer receipts, child support receipts, utility bills, tax documents, and payroll statements; employment verification for the applicant's husband; and documents regarding the revocation of the Form I-130 previously filed on behalf of the applicant by her ex-husband. 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.
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- (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). 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 [REDACTED] 1994, the applicant married her first husband, [REDACTED] a United States citizen, in the Dominican Republic. The applicant's husband filed a Form I-130 on behalf of the applicant, which was approved on January 6, 1995. On April 11, 1996, the

applicant and her husband appeared for an interview and gave contradictory answers to several questions regarding their marriage. On June 17, 1997, the Center Director, Vermont Service Center, revoked the approval of the applicant's Form I-130, finding that the applicant's marriage to [REDACTED] was entered into for immigration purposes. On an unknown date, the applicant and her first husband divorced. On [REDACTED] 2006, the applicant married [REDACTED] a United States citizen, in the Dominican Republic. On November 20, 2006, the applicant's husband filed a Form I-130 on behalf of the applicant. On July 13, 2007, the applicant's second Form I-130 was approved. On February 9, 2009, the applicant filed a Form I-601 based on her inadmissibility under section 212(a)(6)(C)(i) of the Act. On May 25, 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 her 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, she 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 her 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.