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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

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U.S. Citizenship
and Immigration
Services

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[REDACTED]

DATE:
SEP 16 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:

[REDACTED]

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 matter will be remanded to the Field Office Director for action 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), for having sought to procure a visa by fraud or a misrepresentation. The record indicates that the applicant is 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 under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The Field Office Director also stated that even if the applicant had established extreme hardship, she would have been found statutorily ineligible for relief under section 204(c) of the Act. *Decision of the Field Office Director*, dated May 7, 2009.

On appeal, counsel for the applicant contends that the Field Office Director erred in determining that the applicant was inadmissible for having engaged in a sham marriage for the purpose of obtaining an immigration benefit. Counsel submits a brief and a copy of a Board of Immigration Appeals decision. *See Form I-290B and attachment.*

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 the applicant married [REDACTED] on November 2, 1996 in the Dominican Republic. [REDACTED] filed a Form I-130 on behalf of the applicant on July 14, 1997. The legacy Immigration and Naturalization Service (now USCIS) approved the Form I-130 on September 22, 1997. On September 16, 1999, the date of the applicant's visa interview, [REDACTED] made a sworn statement indicating that he had entered into a marriage with the applicant for the sole purpose of assisting her in obtaining an immigration visa. On July 27, 2000, the Director, Vermont Service Center, issued a notice of intent to revoke the approved Form-130 petition to [REDACTED] and he was granted 15 days to respond. The record does not reflect that [REDACTED] replied to the notice. On March 24, 2004, the petition was revoked.

The instant Form I-130, filed by the applicant's current spouse on November 30, 2005, was approved on February 10, 2006. On October 24, 2008, the applicant was refused an immigrant visa under section 212(a)(6)(C)(i) of the Act for entering into a marriage with [REDACTED] solely for immigration purposes.

On appeal, counsel asserts that the Field Office Director relied only on what was previously determined regarding the applicant's marriage to reach his decision and did not base his own conclusions on the extent to which the record establishes section 204(c). Counsel contends that the 204(c) determination is based only on a statement provided by [REDACTED] and that his statement concerning the fraudulent nature of the marriage has been imputed to the applicant. Counsel requests that the applicant's case be remanded to the consulate to allow the applicant the opportunity to give her own account of the facts. However, the applicant has been given the opportunity to offer her own account on appeal and has failed to offer any explanation that would indicate her former spouse's statement concerning the nature of their marriage was not true.

The record contains a sworn statement from [REDACTED] that indicates he married the applicant solely to help her obtain permanent residence in the United States. Pursuant to regulation, the Director of the Vermont Service Center notified [REDACTED] of his intent to revoke the Form I-130 he had filed on the applicant's behalf. The record does not reflect a response from [REDACTED]

Because the record reflects that the applicant entered into a marriage with [REDACTED] solely for immigration purposes, the AAO must conclude that the applicant's prior marriage is within the purview of section 204(c) of the Act and that she 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 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 take the necessary action to initiate proceedings for the revocation of the current 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 Form I-130 will not be revoked pursuant to section 204(c) of the Act, the Field Office Director shall return the matter to the AAO for review.

ORDER: The matter is remanded to the Field Office Director for further action consistent with this decision.