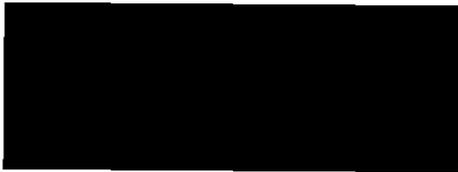


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



H5

Date: AUG 21 2012 Office: ACCRA, GHANA

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Cape Verde 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 Cape Verdean citizen and the father of a U.S. citizen child and three lawful permanent resident children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his children.

The Field Office Director found that the applicant had failed to establish that he has a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 25, 2010.

On appeal, the applicant claims that he has been married to his wife since September 25, 2009; they have three children together; and she is his qualifying relative. *Form I-290B, Notice of Appeal or Motion*, dated July 10, 2010.

The record includes, but is not limited to, statements from the applicant, a marriage certificate for the applicant's first marriage, and a death certificate for the applicant's first wife. 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) 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.

....

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

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

- (1) The [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.

A section 212(i) waiver is dependent first upon a showing that an applicant is the spouse, son, or daughter of a U.S. citizen or lawful permanent resident of the United States. On August 8, 2008, the applicant's U.S. citizen son filed a Form I-130 on behalf of the applicant, which was approved on November 17, 2008. The applicant's U.S. citizen son, however, is not a qualifying family member under section 212(i) of the Act. The record does not establish that the applicant has the qualifying family member required for a waiver.

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 establishes that on September 9, 1985, the applicant married [REDACTED], a U.S. citizen, in Massachusetts. On July 31, 1986, a Form I-130, filed on behalf of the applicant by [REDACTED] was approved. In a notice of intent to revoke the approved Form I-130 dated August 9, 1988, the Center Director, Vermont Service Center, determined that the applicant apparently married [REDACTED] for the sole purpose of obtaining U.S. immigration benefits. The Center Director indicated that after the applicant and

██████████ married on September 9, 1985, the applicant continued his relationship with the mother of his two children and fathered another child with her in 1987. The record includes no response to the notice of intent to revoke approval of the Form I-130. ██████████ passed away on June 7, 1994. The AAO notes that ██████████ death certificate indicates that she was never married.

The record indicates that during the applicant's consular interview on October 21, 2009, he admitted that his marriage with ██████████ was fraudulent. Therefore, the evidence is sufficient to show that the applicant entered into his marriage to ██████████ 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 obtaining a visa to enter the United States. *See* 8 U.S.C. § 1154(c).

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 Field Office Director may consider whether to initiate proceedings for the revocation of the approved Form I-130 petition.

Because the applicant has not shown that he has a qualifying family member as defined in section 212(i) of the Act, the appeal is dismissed.

ORDER: The appeal is dismissed.