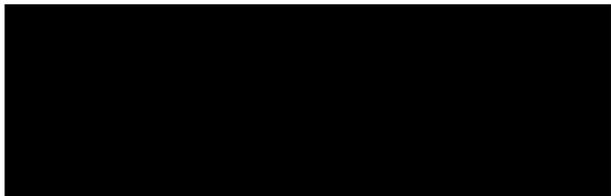


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



765

Date: **AUG 28 2012** Office: PANAMA CITY



IN RE:



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.

Thank you.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the Field Office Director will be withdrawn and the matter remanded to the field office for further proceedings consistent with this decision.

The applicant is a native and citizen of Ecuador who misrepresented her return date to Ecuador using a fraudulent entry stamp in order to hide the fact that she stayed in the United States without authorization. She was found to be inadmissible to the United States under 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 obtain an immigration benefit through fraud or misrepresentation. The applicant is the beneficiary of an approved *Petition for Alien Relative (Form I-130)*, and her husband, a U.S. citizen, is her petitioner. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her husband.

The Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director*, dated April 26, 2010.

On appeal, the applicant indicates that her qualifying spouse is suffering from psychological and financial hardship in the United States. He cannot relocate to Ecuador because he is his elderly mother's only caregiver, and country conditions in Ecuador would cause him hardship.

The Field Office Director, in her April 26, 2010 decision, did not address whether the applicant attempted to enter into a marriage for the sole purpose of evading immigration laws. Prior to the applicant's marriage to the qualifying spouse, she was engaged to [REDACTED] who filed a *Petition for Alien Fiancee (Form I-129F)* on her behalf on June 12, 2002. Evidence in the record suggests that the applicant intended to enter into this marriage for the purpose of obtaining a visa. The Department of State denied her K-1 visa under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure an immigration benefit by fraud or material misrepresentation.

The record contains the following documentation: the original *Application for Waiver of Grounds of Inadmissibility (Form I-601)* and *Notice of Appeal or Motion (Form I-290B)*; letters from the qualifying spouse, his mother and the applicant; the qualifying spouse's professional certifications, recommendations and his diploma; financial documentation; medical documentation regarding the qualifying spouse and his mother; psychological notes and an assessment of the qualifying spouse; birth certificates and other identification and relationship documents for the applicant, qualifying spouse and qualifying spouse's mother; *Form I-130*; an *Application for Immigrant Visa and Alien Registration (Form DS-230)* and the materials accompanying the application. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 204(c) of the Act provides:

[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.

The corresponding regulation, 8 C.F.R. § 204.2(a)(1)(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).

It is unclear whether the applicant's Form I-130 filed by her current husband should have been denied pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c). If the applicant is found to have attempted to enter into a marriage for the purpose of evading the immigration laws of the United States, she would not be eligible for approval of a Petition for Alien Relative, and no purpose would be served in addressing the applicant's eligibility for a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act.

Pursuant to 8 C.F.R. § 205.2, the approval of Form 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 determine whether revocation of the approved Form I-130 petition is necessary. 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 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 shall 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.