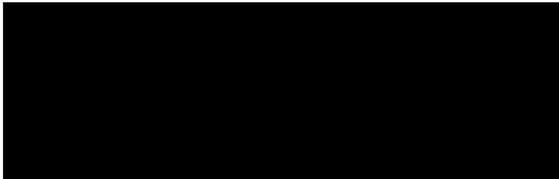


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PUBLIC COPY

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



115

Date: **AUG 30 2012**

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 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, 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 September 1988, a Form I-130, Petition for Alien Relative (Form I-130) approval filed on behalf of the applicant by her then lawful permanent resident spouse, [REDACTED] was revoked because the marriage was deemed invalid for purposes of immigration. It was found that the marriage between [REDACTED] and the applicant was contrived for immigration purpose only. *See Revocation of Form I-130*, dated September 29, 1988.

In December 1996, a Form I-130 approval filed on behalf of the applicant by her lawful permanent resident mother, [REDACTED] was revoked because it came to the attention of the USCIS that the petition filed by [REDACTED] was revoked in September 1988 based on the conclusion that the marriage between the applicant and [REDACTED] was contrived solely to secure the applicant's admission into the United States and not to begin a life together as husband and wife. *See Notice of Intent to Revoke*, dated August 2, 1996 and *Revocation of Form I-130*, dated December 11, 1996.

In October 2003, the applicant's mother, [REDACTED] filed a second Form I-130 on the applicant's behalf which was subsequently approved. 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 State 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. The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Field Office Director*, dated October 13, 2010.

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 Mr. [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 commence proceedings for the revocation of the approved Form I-130 petition filed on behalf of the applicant by her mother in October 2003. 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.