

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**



[REDACTED]

hts

Date: DEC 03 2012

Office: SANTO DOMINGO

FILE: [REDACTED]

IN RE: [REDACTED]

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 PETITIONER:

[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.

Thank you,

Maia Felt
for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded for further action as noted below.

The record establishes that in November 1994 the applicant, a native and citizen of the Dominican Republic, admitted before a consulate investigator that her marriage to [REDACTED] a U.S. citizen, was entered into for the sole purpose of entering the United States as a legal resident. The record reflects that the applicant, in a sworn statement provided to the consulate investigator in Spanish, her native language, confessed that she had married [REDACTED] for the sole purpose of entering the United States as a legal resident. *See Sworn Statement, in Spanish, Signed by the Applicant*, dated November 2, 1994. A Notice of Intent to Revoke the Form I-130 requesting additional documentation with respect to Mr. [REDACTED] marriage to the applicant was issued to Mr. [REDACTED] in September 1996. Mr. [REDACTED] was given sixty (60) days to respond to the Notice. *See Notice of Intent to Revoke*. The approval of the Form I-130 was revoked on December 3, 1996. *Revocation of Petition for Alien Relative, Form I-130*, dated August 2, 2006. The revocation has not been appealed and is therefore final.

In March 1997, the applicant's mother, [REDACTED] filed a Form I-130 on the applicant's behalf, which was approved in June 1997. Based on the applicant's above-referenced admission in November 1994 and the subsequent revocation of the Form I-130 filed on the applicant's behalf by [REDACTED] 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 States through fraud or misrepresentation. Furthermore, the Field Office Director concluded that pursuant to section 204(c) of the Act, the applicant was not eligible for relief. The Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) was denied accordingly. *Decision of the Field Office Director*, dated September 15, 2011.

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.

On appeal, counsel notes that a Notice of Intent to Revoke the applicant's mother's Form I-130 approval was issued on October 26, 2010 and states that based on documentation she submitted in response:

USCIS accepted her [the applicant's] explanation, credited her claims that her marriage was bona fide and not designed to evade the immigration laws, determined that Section 204(c) simply does not apply to the instant case, and via official Notice dated June 9, 2011, reaffirmed the approval of the Beneficiary's [the applicant's] 4th preference I-130 Petition and returned this approved petition to the Department of State.... In essence, the beneficiary's [applicant's] statements concerning the bona fides of her prior marriage and the absence of any fraud has been vindicated by USCIS in the United States in reaffirming the instant I-130 Petition. Given all of the above, the Beneficiary [applicant] cannot be said to have committed fraud...as her prior marital relationship was bona fide at the inception. In this manner the Beneficiary should not have been required to submit an I-601 waiver for fraud.... See Form I-290B, Notice of Appeal, dated October 14, 2011.

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).

As noted above, the approval of the Form I-130 filed by the applicant's mother appears to have been reaffirmed in June 2011 by USCIS. Nevertheless, the Field Office Director concluded that section 204(c) of the Act did in fact apply to the applicant when issuing the decision to deny the applicant's Form I-601 in September 2011, approximately 3 months after the USCIS reaffirmation of the Form I-130. The matter is thus being remanded to the field office director to

determine if in fact the Form I-130 filed on behalf of the applicant by her mother, Ms. [REDACTED] remains valid at this time.

If, after further investigation, the field office director determines that the Form I-130 filed by the applicant's mother has been revoked, the instant Form I-601 shall be dismissed as unnecessary as the applicant is statutorily ineligible for an immigrant visa under 204(c) of the Act. In the alternative, should it be determined that the applicant is not subject to section 204(c) of the Act (and no other grounds of inadmissibility apply to the applicant), the instant Form I-601 shall be dismissed as unnecessary as the applicant is not subject to section 212(a)(6)(C)(i) of the Act, for fraud or misrepresentation.

ORDER: The matter is remanded to the field office director for further examination of the applicant's inadmissibility as noted above.