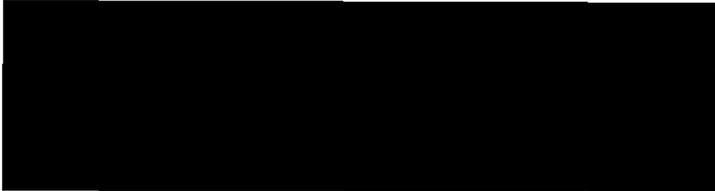




U.S. Citizenship
and Immigration
Services



#5



DATE: DEC 17 2012 Office: SANTO DOMINGO

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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,

Ron Rosenberg
Acting 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 appeal will be remanded to the Field Office Director for further proceedings consistent with this decision.

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), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his lawfully permanent resident spouse.

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated June 27, 2011.

On appeal, applicant asserts that his spouse would suffer extreme hardship if he were not granted a waiver of inadmissibility.

The record contains, but is not limited to, statements from the applicant, the applicant's current spouse and former spouse, divorce records, various immigration applications and decisions including an approved Petition for Alien Relative (Form I-130) that was filed on August 21, 2006. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.

In the present case, the record indicates that the applicant was married to a U.S. citizen, [REDACTED] who filed a Form I-130 Petition for Alien Relative on his behalf. On September 10, 1984, the applicant divorced [REDACTED] yet he subsequently appeared for an interview in connection with an application for permanent residence that was predicated on the approved Form I-130. It was determined at the interview that the applicant attempted to conceal the fact of his divorce. It was also determined that the applicant was residing with his current wife, [REDACTED], at the time, and that they had two children. Whether the applicant was still in a bona fide marriage to [REDACTED] was material to his eligibility for lawful permanent residence based on that relationship.

The Field Office Director found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, as he sought to obtain a benefit under the Act through willful misrepresentation of a

material fact. The Field Office Director observed that the applicant's prior marriage to [REDACTED] was determined to be a "sham", as it was entered into for the purpose of evading the immigration laws of the United States.

On appeal, the applicant and his former spouse assert that their marriage was bona fide, but "short-lived". He indicates that he did not engage in willful misrepresentation of a material fact when attending an immigrant visa interview based on that relationship, as he was forthright regarding the fact that he was no longer married to [REDACTED]. He provides that he attended the interview because he had been summoned by the U.S. Embassy, and that he had previously discussed with an investigator at his home that he was divorced from [REDACTED] and married to his current spouse.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), provides that no alien relative petition shall be approved if:

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

No waiver is available for violation of section 204(c) of the Act. 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). 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).

In the present matter, the finding that the applicant sought an immigration benefit by willful misrepresentation was based, in part, on the determination that he entered into a marriage for the purpose of evading the immigration laws of the United States. If he engaged in such actions, he is not eligible to have a Form I-130 petition approved on his behalf. 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 will remand the matter to the field office director to initiate proceedings on the revocation of the Form I-130 that was approved on April 27, 2010.

The present Form I-601 application for a waiver was filed incident to the applicant's application for an immigrant visa, which is in turn founded on the approved Form I-130 petition on the applicant's behalf. Should the Form I-130 petition be revoked, there will be no underlying basis for the Form I-601 application for a waiver and it will be unnecessary.

Should the AAO make a determination that the applicant is to be granted a waiver of inadmissibility under section 212(i) of the Act only to have the approved Form I-130 petition subsequently revoked on the basis of the applicant's ineligibility under section 204(c) of the Act, the waiver would have no effect.

Based on the foregoing, the AAO will remand the matter to the field office director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approval of the Form I-130 be revoked, the director will issue a new decision dismissing the applicant's Form I-601 application as unnecessary. 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 petition 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.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.