

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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DATE: DEC 19 2012

Office: VIENNA, AUSTRIA

FILE: [REDACTED]

IN RE: [REDACTED]

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:



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,

A handwritten signature in black ink, appearing to read "Jon Rosenberg".

Jon Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Vienna, Austria (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for action consistent with this decision.

The applicant is a native and citizen of Romania who 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 seeking to procure an immigration benefit through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen, [REDACTED] and 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).

The field office director concluded that the applicant failed to establish that a denial of her waiver application would result in extreme hardship to her U.S. citizen spouse and denied the application accordingly. *See Decision of the Field Office Director* dated July 26, 2011.

On appeal, the applicant, through counsel, claims that the applicant's husband would face extreme hardship due to the applicant's inadmissibility. *See Appeal Brief*. Specifically, counsel cites the applicant's husband's significant family ties in the United States, financial situation and mental health. *Id.*

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.

Section 212(i) of the Act provides:

- (1) The Attorney General [now Secretary of Homeland Security (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 alien 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.

The record establishes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having sought to obtain a benefit under the Act through fraud or the willful misrepresentation of a material fact. The applicant first entered the United States in 2003. She

married her first husband in 2004 and subsequently applied for permanent residence on the basis of a Petition for Alien Relative, Form I-130, filed by her first husband on her behalf. The Form I-130 was denied because the applicant and her first husband divorced in 2009. The record indicates that the applicant had been residing with her current husband since 2007. In 2008, the couple had a child. In a sworn statement, signed and dated by the applicant on July 19, 2009, she admitted to a U.S. Customs and Border Protection (CBP) officer that she remained married to her first husband solely for immigration purposes. The Form I-130 filed on the applicant's behalf by her current husband was approved by the California Service Center in 2010.

Section 204(c) of the Act states:

[N]o petition shall be approved if (1) the alien has . . . 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 [now Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the [Secretary] 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). 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)(1)(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, however, 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).

Pursuant to the regulation at 8 C.F.R. § 205.2, the approval of a Form I-130 petition is revocable when the necessity for revocation comes to the attention of U.S. Citizenship and Immigration Services (USCIS). In the present case, the applicant's sworn statements to a CBP officer lead the

AAO to conclude that the applicant's first marriage may come within the purview of section 204(c) of the Act as a marriage entered into for the purposes of evading U.S. immigration laws. If so, the applicant would be permanently barred from obtaining a U.S. immigrant visa. Thus, the AAO finds no purpose would be served in addressing the instant waiver application at this time. Therefore, the AAO remands the matter to the director to initiate proceedings for the revocation of the Form I-130 that was approved on April 7, 2010. Should the approved Form I-130 petition be revoked, the director will 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 director will 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 director for further processing consistent with this decision.