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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



H5

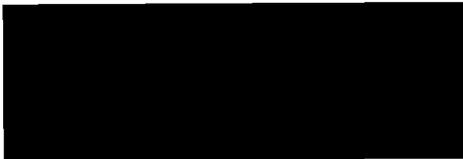
DATE: OFFICE: ACCRA, GHANA

FILE:

IN RE: **FEB 15 2012**
Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(11), and 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.

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,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly aided another alien who was not his daughter to try to enter the United States in violation of the immigration law. The applicant also was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation. And, the applicant was found to have violated section 204(c) of the Act, 8 U.S.C. § 1154(c), for having entered into a marriage to evade immigration laws. The applicant is the son of a Lawful Permanent Resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant contests the finding of inadmissibility under section 212(a)(6)(C)(i) and the finding that he violated section 204(c) of the Act, and seeks a waiver pursuant to sections 212(i) and 237(a)(1)(H) of the Act, 8 U.S.C. §§ 1182(i) and 1227(a)(1)(H), in order to reside in the United States with his mother.¹ The AAO notes that the applicant does not address the finding of inadmissibility under section 212(a)(6)(E)(i) of the Act.

The Field Office Director concluded that the applicant was not subject to the inadmissibility provisions under section 212(a)(9)(B)(i) of the Act, but was inadmissible under sections 212(a)(6)(C)(i) and 212(a)(6)(E)(i) of the Act, and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The Field Office Director further denied the applicant's Form I-601 as a matter of discretion, indicating that, under section 204(c) of the Act, the applicant also is subject to a prohibition of the approval of any visa petition filed on his behalf for having entered into a fraudulent marriage for the purpose of evading U.S. immigration laws to obtain a benefit. *See Decision of Field Office Director*, dated August 20, 2009.

On appeal, the applicant asserts that the documentation submitted in support of his waiver application evidences that he is not subject to the 10-year bar provided in the unlawful presence provisions of the INA; that he did not enter into a fraudulent marriage; and that he is eligible for a waiver under various provisions provided in the INA because of the extreme hardship his mother would experience. *See Form I-290B, Notice of Appeal or Motion*, dated September 14, 2009.

The record includes, but is not limited to: letters of support; a legal opinion and resources; identity documents; medical documents; and criminal records. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 204(c) of the Act states:

¹ The AAO notes that the applicant submitted a legal opinion from [REDACTED] and that the record does not include a Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) submitted on the applicant's behalf by Mr. Mosqueda.

[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 U.S.C. § 1154(c). 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 in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

The record reflects that the applicant married a U.S. citizen, [REDACTED], on December 14, 1992. On December 21, 1992, [REDACTED] filed a Form I-130 relative petition on behalf of the applicant. On January 13, 1993, legacy Immigration and Naturalization Service (INS) (now the United States Citizenship and Immigration Services (USCIS)), approved the Form I-130 petition. The applicant returned to Ghana on or about July 7, 1994, and has remained to date.

The record also reflects that after conducting a consular interview of the applicant on August 15, 1994, and reviewing the evidence in the record, legacy INS concluded that the applicant and [REDACTED] entered into their marriage as an attempt to evade the immigration laws of the United States in order to obtain benefits. On May 28, 1996, legacy INS revoked the approval of the Form I-130 petition. On January 8, 1997, the applicant and [REDACTED] divorced.

The record further reflects that on December 23, 1999, the applicant's Lawful Permanent Resident mother, [REDACTED] filed a Form I-130 petition on the applicant's behalf. On February 25, 2005, USCIS approved the I-130 Petition. In that the applicant's prior marriage has been found to have been entered into for the purpose of evading the immigration laws of the United States, he is

permanently barred from benefitting from a subsequent Form I-130 petition filed by another family member. *See* 8 U.S.C. § 1154(c). In light of this permanent bar, no purpose would be served in addressing the applicant's contentions regarding his eligibility for an extreme hardship 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 USCIS. Therefore, the AAO remands the matter to the Field Office Director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the Field Office 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 Field Office 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 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.