



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

[Redacted]

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DATE: JUN 08 2012

Office: ACCRA, GHANA

[Redacted]

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

[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.

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 with the field office or service center that originally decided your case by filing a 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 Khew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Accra, Ghana and the matter is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> The appeal will be remanded to the FOD for further processing consistent with this decision.

The applicant is a citizen of Nigeria who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for engaging in marriage fraud to procure an immigration benefit; and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II) for having been unlawfully present in the United States for a period of more than one year, and seeking admission within 10 years of the date of his last departure. The applicant is a spouse and a father of U.S. citizens and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and children.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and also found that the Petition for Alien Relative was approved in error, because the applicant had entered into a sham marriage with his prior spouse in order to evade immigration laws. The director denied the application accordingly. *See Decision of Field Office Director* dated March 20, 2009.

Section 204(c) of the Act states:

[N]o 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 [now Secretary of Homeland Security, "Secretary"] 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.

The corresponding regulation, 8 C.F.R. § 204.2(a)(1)(ii), states in pertinent part:

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

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<sup>1</sup> Counsel indicated on Form I-290B that the appeal was for both Forms I-601 and I-212. Because a separate Form I-290B was not filed for each application, the AAO will render a decision only for the appeal of the Form I-601 decision.

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).

The record indicates that on March 24, 1987, the I-130 petition filed by the applicant's first wife on his behalf was denied on the basis of a finding of sham marriage. The applicant divorced his first wife on June 16, 1989 and married his current wife on February 10, 1990. The I-130 petition filed by his current wife was approved on June 3, 2008.

There is evidence in the record indicating that the applicant's first petition was denied based on a finding that he entered into sham marriage to evade immigration laws. 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 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 accordingly. 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 field office director for further proceedings consistent with this decision.