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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

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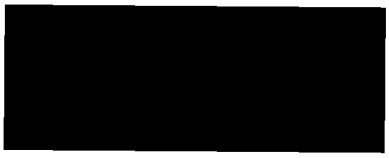

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DATE: MAR 2 1 2012 Office: ACCRA, GHANA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B) and under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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,

for

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 Nigeria 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 procuring an immigrant visa to the United States by fraud or willful misrepresentation of a material fact, and pursuant to 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 more than one year and seeking readmission within ten years of his last departure from the United States. The applicant's four children are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The field office director concluded that the applicant did not have a qualifying relative upon which to base a waiver application and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 12, 2009.

On appeal, the applicant's daughters detail the hardship that the family is experiencing without the applicant. *Letter from Applicant's Daughters*, dated September 2, 2010.

The record includes, but is not limited to, the daughter's letter and foreclosure documents. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant filed for an immigrant visa based on marriage to a U.S. citizen on July 15, 1988 and his interview was in or around August 1988. On his immigrant visa application, the applicant failed to list his three children at the time, and he failed to list that he was married to a woman in Nigeria at the same time he married his U.S. citizen spouse. Based on these misrepresentations, he is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure an immigration visa to the United States by willful misrepresentation of material facts.

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

> (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 that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 reflects that the applicant was in removal proceedings and he was granted voluntary departure by the Board of Immigration Appeals (BIA) until January 3, 2003. The applicant did not depart the United States on or before this date, thus resulting in a removal order against him. He was apprehended on January 12, 2007 and removed on August 14, 2007. The applicant accrued unlawful presence from January 4, 2003, the day his order of removal was in effect until August 14, 2007, the date he was removed from the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his August 14, 2007 departure from the United States.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .
>
> (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez,* 21 I&N Dec. 296, 301 (BIA 1996).

In this case, the applicant has not established that he has a qualifying relative under sections 212(a)(9)(B)(v) and 212(i) of the Act. Therefore, the appeal will be dismissed.

The AAO notes that in the same decision, the field office director denied the applicant's Form I-212, Application for Permission to Reapply for Admission After Deportation or Removal. The AAO has dismissed the applicant's appeal of the denial of the Form I-601. When an inadmissible alien files both the Form I-601 and the Form I-212, the *Adjudicator's Field Manual* provides the following guidance:

> Chapter 43 Consent to Reapply After Deportation or Removal
>
> 43.2 Adjudication Processes:
>
> (d) Of course, an alien might be applying for both consent to reapply and a waiver of inadmissibility, provided the particular ground(s) of inadmissibility applying to the alien are waivable. If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose.

In that the AAO has determined that the applicant is not eligible for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act and has dismissed his appeal of the Form I-601 denial, no purpose would be served in considering his application for permission to reapply for admission. Accordingly, the appeal of the field office director's denial of the Form I-212 is dismissed as a matter of discretion.[1]

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[1] 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 [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.

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.

ORDER: The appeal is dismissed.

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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).

The record reflects that the applicant was the beneficiary of a Form I-130, Petition for Alien Relative, filed by and the record indicates that this was a sham marriage entered into solely for the purpose of circumventing the immigration laws. The AAO is noting this in order for the field office director to determine whether revocation proceedings are appropriate for the current I-130 in which the applicant is the beneficiary.