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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**



PUBLIC COPY

[REDACTED]

tlg

Date: Office: NEW YORK, NY FILE: [REDACTED]
MAR 30 2012
IN RE: Applicant: [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:

[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 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 Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the director for further proceedings consistent with this decision.

The record reflects that 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(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for attempting to procure an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant's spouse is a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

The director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated August 7, 2009.

On appeal, counsel states that the applicant's spouse would experience extreme hardship if the waiver is not approved. *Brief in Support of Appeal*, dated August 31, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, a psychoemotional assessment and country conditions information. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was the beneficiary of a Form I-130, Petition for Alien Relative, which was filed on April 13, 1988. The applicant admitted that her marriage was arranged to secure her legal admission to the United States. As such, she is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure a benefit under the Act by willful misrepresentation of a material fact.

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.

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.

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 establishes that on December 30, 1987, the applicant married her first spouse, [REDACTED] a U.S. citizen. The applicant's first spouse filed a Form I-130, Petition for Alien Relative, on behalf of the applicant. In a June 17, 1993 Notice of Intent to Revoke, the center director stated that [REDACTED] married the applicant solely for the purpose of obtaining U.S. immigration benefits for the applicant and that the applicant testified that her marriage was arranged to secure her legal admission to the United States. On March 11, 1994, the Form I-130 was revoked. On April 23, 2001, the applicant married [REDACTED] a U.S. citizen. On July 17, 2001, the applicant's second spouse filed a Form I-130 on behalf of the applicant, and it was approved on January 22, 2002. On April 14, 2005, the applicant's second spouse filed another Form I-130 on behalf of the applicant. On August 2, 2005, the applicant's second Form I-130 was approved. On July 10, 2009, the applicant filed a Form I-601 based on her inadmissibility under section 212(i) of the Act. On August 7, 2009, the director

denied the applicant's Form I-601. The AAO notes the evidence submitted by the applicant in regard to the bona fides of her marriage to [REDACTED] including statements related to the marriage, money sent from him to her, photographs and a birth certificate for his child. The AAO has considered the entire record. Because the record does not show that the applicant entered into her marriage to [REDACTED] in good faith and not for the purpose of evading the immigration laws of the United States, the AAO must conclude that the applicant's prior marriage is within the purview of section 204(c) of the Act as a marriage entered into for the purpose of evading the immigration laws. 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, she is permanently barred from benefitting from a Form I-130 petition filed by a subsequent spouse or 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 her 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 director to initiate proceedings for the revocation of the approved Form I-130 petition. 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 pursuant to 8 C.F.R. § 103.4.

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