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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**

H5



Date: **SEP 12 2012** Office: MILWAUKEE, WISCONSIN FILE:

IN RE:

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 PETITIONER:

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.

Perry Rhew, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Milwaukee, Wisconsin. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The matter will be remanded to the field office for further proceedings consistent with this decision.

The record reflects that 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)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. ^ 1182(a)(6)(C)(i), for having entered the United States through fraud or willful misrepresentation. The applicant 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), in order to reside in the United States with his U.S. citizen wife and son.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 30, 2007.

On appeal, the AAO found that no purpose would be served in considering the applicant s eligibility for a waiver, as the applicant entered into a marriage solely for the purpose of evading immigration purposes. Consequently, the appeal was dismissed. *Decision of the AAO*, dated June 21, 2010.

In support of the instant motion, the applicant submits a statement attached to the Notice of Appeal or Motion (Form I-290B); a copy of a letter from his attorney, dated January 18, 2006; and a copy of his Freedom of Information/Privacy Act Request (Form G-639). The entire record was reviewed and considered in rendering this decision.

Section 204(c) of the Act provides:

[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.

The corresponding regulation, 8 C.F.R. ^ 204.2(a)(1)(C)(ii), 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.

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 applicant's first spouse filed a Form I-130 on his behalf, but withdrew her petition in a letter dated May 29, 2001 in which she indicated that the marriage was not bona fide. The applicant's second spouse filed another Form I-130 on his behalf and this petition was approved on December 22, 2005. The applicant subsequently filed a Form I-601 with respect to the approved petition and application for adjustment of status.

On July 13, 2010, the Field Office Director issued a Notice of Intent to Revoke (NOIR) with respect to the applicant's Petition for Alien Relative, Form I-130, finding that the applicant's prior marriage to [REDACTED] had been entered into for the purposes of circumventing the immigration laws of the United States. The petitioner was accorded 30 days to offer evidence in support of her petition and in opposition to the grounds alleged for revocation. However, the record does not indicate that any supplemental evidence was submitted or that any further action has been taken with regards to the revocation of the current Form I-130.

Therefore, the AAO remands the matter to the Field Office Director to make a determination as to whether the revocation of the approved Form I-130 petition is appropriate. Should the approved Form I-130 petition be revoked, the Field Office Director shall issue a new decision dismissing the applicant's Form I-601 as unnecessary. In the alternative, should it be determined that the applicant is not subject to section 204(c) of the Act, and the Form I-130 is not to be revoked, then the Field Office Director shall 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 shall be certified for review to the AAO.

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