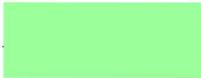


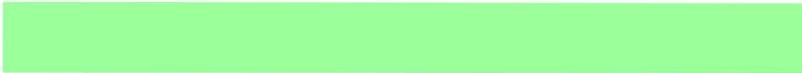


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: FEB 01 2013 OFFICE: LIMA FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 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 in accordance with the instructions on 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,

Ron Rosenberg, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director for further action.

The applicant is a native and citizen of Peru 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). The applicant seeks a waiver of inadmissibility (Form I-601) under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. spouse.

In a decision dated February 17, 2012, the Field Office Director concluded that in addition to being inadmissible under section 212(a)(6)(C) of the Act, the applicant's Form I-601 was moot as a result of the evidence in the record indicating that she was subject to section 204(c) of the Act, 8 U.S.C. § 1154(c).

On appeal counsel for the applicant states that the applicant should not be subject to section 204(c) of the Act and argues that the record establishes that the applicant's U.S. citizen spouse would suffer extreme hardship as a result of the applicant's inadmissibility. Counsel also requests that the application be held for the results of a Freedom of Information Act request sent to the U.S. Department of State. The application will not be held and is being remanded to the Field Office Director in accordance with the below decision.

In support of the waiver application, the record includes, but is not limited to legal arguments by counsel for the applicant, a statement from the applicant's spouse, a psychiatric report concerning the applicant's spouse, financial and property ownership documentation for the applicant's spouse, letters from friends and family of the applicant's spouse, country conditions information for Peru, and documentation concerning the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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 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 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)(1)(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 married [REDACTED] on May 3, 1999, and that a Petition for Alien Relative (Form I-130) filed on her behalf by [REDACTED] was approved on October 19, 2001. The record also reflects that the Petition for Alien Relative was revoked on April 27, 2005. Documentation in the record indicates that the applicant's marriage to [REDACTED] was entered into for the purpose of circumventing the immigration laws. The applicant presented an altered birth certificate for [REDACTED] to the U.S. Consulate and it was discovered that the applicant and [REDACTED] were cousins. The applicant and her first husband were divorced on July 14, 2010 and the applicant married her current spouse on August 11, 2010. The applicant's spouse filed a Petition for Alien Relative on her behalf and that petition was approved on March 23, 2011. Upon applying for an immigrant visa, the applicant was informed by the U.S. Consulate of her inadmissibility under section 212(a)(6)(C)(i) of the Act as a result of the false birth certificate presented in connection with her previous immigrant visa application. The applicant submitted the underlying application for a waiver of inadmissibility. The Field Office Director, however, determined that the applicant was subject to section 204(c) of the Act as the result of her previous marriage which the evidence of record made clear was entered into to evade the immigration laws. The applicant was notified by the Field Office Director that the Petition for Alien Relative filed by her current U.S. citizen spouse, if approved in error, should be revoked, and would be processed for revocation.

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 obtaining approval of immigrant visa petition. 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 the Service. The record indicates that the Field Office Director has recommended that the immigration visa petition underlying this application be revoked. As of the date of this decision no final determination has been made on the revocation. Therefore, the AAO remands the matter to the Field Office Director to await final action on the applicant's underlying Form I-130. If the approved Form I-130 petition is revoked, the Field Office Director's decision denying the applicant's Form I-601 as moot should stand and no further action will be required of either the Field Office Director or the AAO. 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.