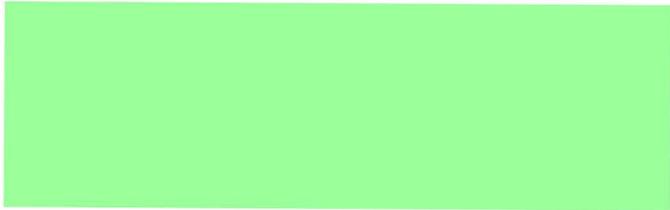


(b)(6)

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



Date: **MAY 10 2013**

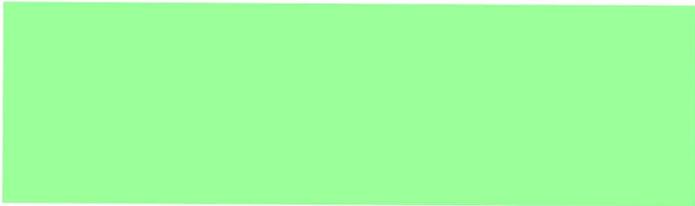
Office: [Redacted]

FILE: [Redacted]

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:



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.

Thank you

*[Handwritten signature]*

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Guangzhou, China. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the field office director for further proceedings consistent with this decision.

The applicant is a native and citizen of China who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The field office director concluded that the applicant had entered into a prior marriage for the sole purpose of immigrating to the United States and failed to report that marriage on documentation submitted to the USCIS in support of an I-130, Petition for Immigrant Relative, from his current spouse. The applicant does not contest the finding, but seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with his U.S. citizen spouse.

In his decision, the field office director found that the applicant married his second spouse after she had spent two weeks in China, and she then departed the country the same day the marriage took place. The field office director indicated that in addition to a petition filed for the applicant his second spouse had filed additional petitions for other spouses and step-children during the same period of time, with all those applications denied. The field office director indicated that a request for evidence of a bona fide second marriage and genuine first divorce had been sent to the applicant, but that with the response insufficient evidence had been submitted. It was therefore concluded that the applicant's second marriage was made for the purpose of immigrating to the United States to join with his first spouse and daughter. The field office director further found that the applicant failed to establish that his qualifying relative spouse would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated July 20, 2011.

On appeal the applicant contends he thought his second marriage would allow him to see his daughter in the United States and he did not know the woman he married had also applied for others. No additional evidence or brief from counsel was provided on appeal. The record contains statements from the applicant, spouse, and daughter; financial documentation for the spouse; and medical documentation for the daughter. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant married his current spouse in 1991, but divorced her in 1993. She subsequently entered the United States as an unmarried daughter of a U.S. citizen in 2002. In 2003 the applicant married a second wife, a U.S. citizen who returned to the United States the same day as the wedding. The record reflects that from 2003 to 2004, the applicant's second wife had submitted five other I-130 petitions for spouses in addition to four petitions for step-children. After contending he had lost contact with his second wife following her return to the United States, the applicant stated that he divorced her in 2008. In 2009 the applicant remarried his first wife, who had become a United States citizen and filed an I-130 on behalf of the applicant. The petition was approved on November 30, 2009. On Form G-325A, Biographic Information, submitted with the

petition the applicant failed to list his prior marriage. The field office director determined that the applicant had failed to establish his second marriage was bona fide and not made only to immigrate to the United States.

In its denial of an I-130 petition filed on behalf of the applicant by his second spouse, USCIS listed multiple petitions filed by the petitioner for spouses and step-children. It concluded there was insufficient evidence to establish that the applicant's marriage to the petitioner was a valid marriage for immigration purposes. It further noted that the petitioner had not responded to a Notice of Intent Deny issued to her. The petition was therefore denied on November 24, 2008.

In a 2011 statement in support of her petition for the applicant, his current spouse stated that the applicant had married another woman because she had left him to come to the United States. She stated that the applicant later told her he was cheated by the second wife and divorced her. In his statement the applicant asserted that he married his second wife a few months after being introduced "hoping to start a new family with her." He states that though she was in the United States and he in China they talked on the phone and "suddenly one day I couldn't find her anymore. I waited until 2008 to file the divorce."

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office director does not identify all of the grounds for denial in the initial decision. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 204(c) of the Act, 8 U.S.C. § 1154(c), provides that no alien relative 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 [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

No waiver is available for violation of section 204(c) of the Act. 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.

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 contains substantial and probative evidence that the applicant's marriage to his second spouse was entered into for the sole purpose of evading the 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 field office 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.

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