



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

Date: **OCT 01 2014** Office: GUANGZHOU 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
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 dismissed.

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 USCIS in support of a Form I-130, Petition for Alien 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 denying the applicant's waiver application, the field office director 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 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. *See Decision of the Field Office Director* dated July 20, 2011.

On appeal the applicant contended that he thought his second marriage would allow him to see his daughter in the United States and he did not know that the woman he married had also applied for others. No additional evidence or brief from counsel was provided on appeal.

In remanding the case to the field office director we found that the record contained 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. We therefore remanded the matter to the field office director to initiate proceedings for the revocation of the approved Form I-130 petition. *See Decision of the AAO* dated May 10, 2013.

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).

On October 24, 2013, the California Service Center issued a Notice of Intent to Revoke the approved Form I-130 filed by the applicant's spouse on his behalf. The applicant responded to the notice of intent to revoke by submitting letters from his spouse, daughter, and sister, along with statements from a medical doctor and faculty at the university attended by the applicant's daughter. On December 9, 2013, the Form I-130 filed on the applicant's behalf was revoked by USCIS and on February 13, 2014, the field office director, Guangzhou, China, denied the applicant's waiver application for a second time as the applicant was without a valid immediate relative petition.

The viability of the Form I-601 is dependent on an adjustment of status or visa application that is based on an approved petition. In the absence of an approved Form I-130 petition there is no underlying application for admission, and no purpose would be served in adjudicating the Form I-601. Since the Form I-130 petition submitted by the applicant's spouse has been revoked, the appeal of the denial of the waiver application must be dismissed.

**ORDER:** The appeal is dismissed.