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

(b)(6)

U.S. Citizenship and Immigration Services

Date: OCT 0 2 2014 Office: GUANGZHOU FILE:

IN RE: Applicant:

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:

SELF-REPRESENTED

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, then remanded to the Field Office Director by the Administrative Appeals Office (AAO). The Field Office Director denied the applicant's waiver application a second time and certified the case to the AAO for review. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the People's Republic of China (China) 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 attempting to seek a benefit through fraud or the willful misrepresentation of a material fact, specifically, marrying a U.S. citizen to obtain immigration benefits. The record indicates that the applicant is married to a U.S. citizen and the mother of four Chinese citizen children. 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 her spouse and children.

The Field Office 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 Field Office Director*, dated July 30, 2012. We remanded the matter to the Field Office Director to initiate proceedings for the revocation of the approved Petition for Alien Relative (Form I-130). *Decision of the AAO*, dated April 5, 2013. The Field Office Director subsequently denied the Form I-601 a second time, because the applicant's underlying Form I-130 had been terminated by the U.S. Consulate in Guangzhou on or about November 26, 2011. *Decision of the Field Office Director*, dated February 14, 2014.

The record includes, but is not limited to, statements from the applicant, her husband, and mother; photographs; documents in Chinese[1]; documents pertaining to the applicant's marriages; and documents regarding the revocation of the Form I-130 previously filed on behalf of the applicant by her ex-husband. The entire record was reviewed and considered, with the exception of the Chinese-language documents, in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) In general.-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.
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> . . . .

[1] Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. The documents in Chinese that are not accompanied by English-language translations will not be considered in this proceeding.

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

(1) The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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.

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). U.S. Citizenship and Immigration Services (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 November 22, 2000, the applicant married her first husband, a U.S. citizen, in China. On April 19, 2001, and July 10, 2001, two of four Form I-130s he filed on the applicant's behalf were approved. On January 24, 2008, the applicant divorced Mr. A few months later she married her second husband, a U.S. citizen, in China, with whom she has four children who were born between 2001 and 2006. On March 30, 2009, the Form I-129F and Form I-130 filed by Mr. on the applicant's behalf were approved.

On May 27, 2010, the Director, California Service Center, revoked the approval of one of the applicant's Form I-130 petitions, finding that the applicant's marriage to Mr. was entered into for immigration purposes. Thus the evidence is sufficient to show that the applicant entered into her marriage to Mr. for the purpose of evading the immigration laws of the United States. Because the applicant's prior marriage was 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. Thereafter, on or about November 26, 2011, the Department of State's immigrant visa unit at the U.S. Consulate in Guangzhou terminated the underlying Form I-130. As such, our request to initiate proceedings to revoke the approved Form I-130 petition is unnecessary.

According to the Field Office Director's second Form I-601 denial decision, on November 26, 2011, and May 6, 2013, the National Visa Center notified the applicant that her registration had been terminated, pursuant to section 203(g) of the Act, because she failed to apply for an immigrant visa within one year of being advised that a visa was available for her and to have her application reinstated by establishing that her failure to pursue an immigrant visa was beyond her control. The regulation at 8 C.F.R. § 205.1(a)(1) states that a Form I-130 is automatically revoked if the Secretary of State terminates the registration of the beneficiary pursuant to section 203(g) of the Act.

The viability of the Form I-601 is dependent on an immigrant visa application that is, in turn, based on an approved Form I-130. *See* 8 C.F.R. § 212.7(a). In the absence of an underlying approved Form I-130, the Form I-601 is moot. The appeal of the denial of the waiver must therefore be dismissed as unnecessary.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.