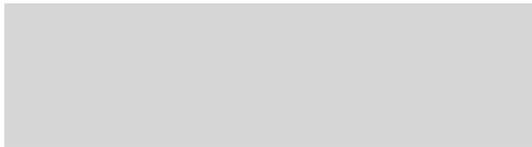




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 15 2015**

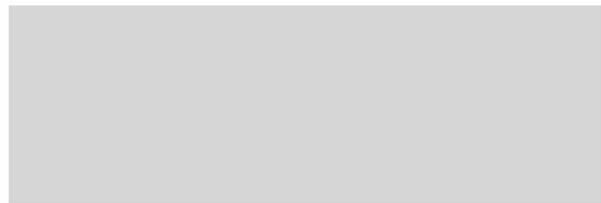
FILE: [REDACTED]

APPLICATION RECEIPT #: [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 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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application for waiver of inadmissibility, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the Director will be withdrawn and the matter remanded to the Director for further proceedings consistent with this decision.

The record reflects that the applicant is a native and citizen of the Dominican Republic 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 sought to procure an immigration benefit by fraud or material misrepresentation. The applicant is married to a U.S. citizen and has two U.S. citizen daughters. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act.

In his decision, the Director stated the applicant provided a written confession indicating that she married a U.S. citizen solely for the purposes of immigrating to the United States, and as a result found her inadmissible under section 212(a)(6)(C)(i) of the Act. In addition, the Director found that the applicant did not have a qualifying spouse, and was therefore ineligible for a waiver. *See Decision of the Director* dated July 22, 2014.

On appeal, the applicant, through counsel, states that given the finding of misrepresentation based on marriage fraud, she was erroneously informed that she could become eligible to adjust status if she filed a waiver application. In addition, the applicant asserts that if U.S. Citizenship and Immigration Services (USCIS) had reason to believe the applicant had entered into a fraudulent marriage for the purposes of evading the immigration laws of the United States, USCIS should have remanded the approved Form I-130, provided notice and initiated revocation proceedings.

The record reflects that, on January 20, 1995, the Form I-130 filed by the applicant's U.S. citizen spouse, was approved. On July 18, 1996, the applicant confessed in writing that she entered into this marriage for the sole purposes of obtaining immigration benefits. She had been previously married to her current husband, with whom she had two daughters and one son. The couple divorced in 1993 and remarried in 1994. On September 12, 1996, the Immigration and Naturalization Service (INS) sent the applicant's husband a letter notifying him of its intent to revoke the approval of the Form I-130, providing the applicant's husband the opportunity to submit evidence to overcome the reasons for revocation, namely the applicant's written confession. The applicant's spouse did not submit a rebuttal or additional evidence to contest the findings in the notice, and the Form I-130 was revoked on December 12, 1996. The record also reflects that the applicant does not have any contact with her U.S. citizen spouse. In the Application for Waiver of Grounds of Inadmissibility (Form I-601), the applicant indicates that she has not spoken with her husband since 1994. A record from the applicant's husband also confirms that he does not take any responsibility for his two daughters, who live in the United States. The applicant's current Form I-130 was filed by her U.S. citizen daughter, in or around August 2013.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 [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.

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).

As stated above, on July 22, 2014, the Director found that the applicant married a U.S. citizen solely for purposes of immigrating to the United States, after indicating that she confessed to the same in writing. As a result, he found her inadmissible under section 212(a)(6)(C)(i) of the Act. The Director also indicated in his decision that the applicant required a qualifying relative to be eligible for a waiver. *See Decision of the Director*, dated July 22, 2014. However, if the Director concludes that the applicant did not enter into the marriage for purposes of obtaining an immigration benefit, then the applicant would not require a waiver for fraud or misrepresentation.

As stated above, the applicant's husband filed a Form I-130 for the applicant that was ultimately revoked on December 12, 1996 because the applicant confessed in writing that she entered into the marriage for the sole purpose of obtaining immigration benefits. Prior to its revocation, the applicant's husband was given the opportunity to rebut the claims that his marriage was entered into for the sole purpose of obtaining an immigration benefit and failed to respond to the Notice of Intent to Revoke. The applicant had been previously married to her current husband, with whom she had two daughters and one son. The couple divorced in 1993 and remarried in 1994. The record reflects that the applicant does not have any contact with her U.S. citizen spouse. Specifically, in the

Form I-601, the applicant indicates that she has not spoken with her husband since 1994 and a letter from the applicant's husband indicates that he does not take any responsibility for his two daughters, who live in the United States.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 (“Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . .”). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, specifically with respect to marriage fraud, the BIA has made clear that once there is evidence of marriage fraud from a former spouse, the burden of proof shifts to the applicant. *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988) (“where there is evidence in the record to indicate that the beneficiary has been an active participant in a marriage fraud conspiracy, the burden shifts to the petitioner to establish that the beneficiary did not seek nonquota or preference status based on a prior fraudulent marriage”); *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975) (“where there is reason to doubt the validity of the marital relationship, [the burden shifts to the applicant to] present evidence to show that it was not entered into for the primary purpose of evading the immigration laws”).

Based on the above, we remand the matter to the Director to evaluate whether the applicant is subject to section 204(c) of the Act for entering into a marriage for the sole purpose of evading the immigration laws of the United States. 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 applicant's current Form I-130 and ability to obtain any future benefit under the Act is directly related to the Director's July 22, 2014 decision.

If the Director determines that the applicant is subject to section 204(c) of the Act, no further action is required. If, however, the Director finds 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 Director shall issue a new decision addressing the merits of the applicant's Form I-601 waiver application and whether such application is necessary. If that decision is adverse to the applicant, it shall be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

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