



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF I-M-A-

DATE: JAN. 27, 2016

APPEAL OF LAS VEGAS FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Nigeria, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Las Vegas, Nevada denied the application. The matter is now before us on appeal. The appeal will be dismissed. The matter will be remanded to the Director for further proceedings consistent with the foregoing opinion.

In a decision dated April 2, 2015, the Director found that the Applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for having procured a visa by fraud or a material misrepresentation. The Director found that she had not demonstrated that her U.S. citizen spouse would suffer extreme hardship as a result of her inadmissibility. The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied accordingly.

On appeal, the Applicant asserts that she did not intend to lie on her visa application and is sorry for making the mistake of allowing someone else to fill out her application. She also asserts that she warrants a favorable exercise of discretion and her spouse will suffer extreme hardship as a result of her inadmissibility.

The record includes, but is not limited to, statements from the Applicant and her spouse, medical records, financial records, photographs, and immigration records. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

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.

The record reflects that the Applicant divorced her first spouse in Nigeria on [REDACTED] 2000. In 2001, the Applicant applied for and received a nonimmigrant visa to enter the United States. During this process the Applicant made a material misrepresentation in claiming to be married to her former spouse when in fact she was divorced.

The Applicant asserts that she never intended to lie on her visa application form; and she is sorry for trusting someone else with filling out her visa application and not verifying the information before signing it. The term "willful" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956). We are unable to find that an applicant is inadmissible for making a willful misrepresentation of a material fact without "clear, unequivocal, and convincing evidence." *See Kungys v. United States*, 485 U.S. 759, 771-72 (1988).

The record does not include sufficient documentary evidence to support her claim that her misrepresentation was not willful. The record does not include sufficient evidence showing that the Applicant was incapable of exercising her judgment during the visa-application process or was unaware of her actions. As such, the Applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring a non-immigrant visa by willful misrepresentation of a material fact.

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). 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).

*Matter of I-M-A-*

On September 1, 2001, the Applicant entered the United States. She married [REDACTED] in [REDACTED] 2003, and a Form I-130, Petition for Alien Relative, filed on her behalf by [REDACTED] was approved on December 11, 2006. This Form I-130 was revoked on October 25, 2013 and [REDACTED] and the Applicant then divorced on [REDACTED] 2014. On [REDACTED] 2014, the Applicant married the Petitioner of her current Form I-130. On April 6, 2015, this Form I-130 was approved.

Documentation in the record indicates that the Applicant's previous marriage to [REDACTED] was entered into for the purpose of circumventing the immigration laws. An April 5, 2011, investigation and site visit by the Department of Homeland Security, Fraud Detection and National Security, revealed that [REDACTED] and the Applicant had not been living together for at least six years and had not spoken for six months. The record does not clearly establish that the Applicant and [REDACTED] ever resided together for a meaningful period of time. In addition, the Applicant and [REDACTED] submitted a jointly signed lease agreement, dated 2011, which directly contradicts the findings of the investigation and indicates that the fraudulently signed lease was submitted as a material misrepresentation as to the nature of the couple's relationship. The investigation also determined that the Applicant was residing with another male companion at the time. A person the Applicant states is her brother or cousin. In a decision dated October 25, 2013, the Director, California Service Center, stated that a Notice of Intent to Revoke was issued based on marriage fraud, and that the grounds of revocation were not overcome.

In that the Applicant's prior marriage to [REDACTED] 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 an 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 a Form I-130 is revocable when the necessity for the revocation comes to the attention of the Service. The record indicates that a previous Form I-130, filed on the Applicant's behalf, was revoked by the California Service Center after a finding was made that the Applicant's prior marriage to [REDACTED] was entered into for the purpose of evading the immigration laws of the United States. Thus, we remand the matter to the Director of the Las Vegas Field Office to consider whether the Applicant's current Form I-130 should be revoked pursuant to the bar under section 204(c) of the Act and 8 C.F.R. § 204.2(a)(1)(ii). If the approved Form I-130 is revoked, then the Applicant's Form I-601 is 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, the Applicant's Form I-601 waiver application will be certified for review to us pursuant to 8 C.F.R. § 103.4.

**ORDER:** The appeal is dismissed. The matter is remanded to the Field Office Director, Las Vegas, Nevada, for further proceedings consistent with the foregoing opinion.

Cite as *Matter of I-M-A-*, ID# 14759 (AAO Jan. 27, 2016)