

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6



FILE:



Office: MEXICO CITY, MEXICO
(PANAMA CITY, PANAMA)

Date:

AUG 19 2010

IN RE:

Applicant:



APPLICATION:

Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Tariq Syed

for
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Mexico City, Mexico and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Acting District Director for further proceedings consistent with this decision.

The applicant is a native and citizen of Colombia who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and his United States citizen child.

The record reflects that on July 3, 1994, the applicant entered the United States without inspection near San Ysidro. On January 17, 1995, the applicant affirmatively filed for asylum. *Form I-589, Request for Asylum in the United States*. The asylum office referred his case to the Immigration Judge. *Referral Notice*, dated April 6, 1995. On September 22, 1995, an Order to Show Cause and Notice of Hearing was initiated upon the applicant with a hearing before the Immigration Judge set for July 24, 1996. *Form I-221, Order to Show Cause*. On September 28, 1996, the applicant married his second spouse, [REDACTED] *Marriage Certificate*. The record indicates that as of that date, deportation proceedings had not been terminated. On March 24, 1997 the applicant's second spouse was requested to submit clear and convincing evidence that her marriage to the applicant was entered into in good faith and not for the purpose of obtaining permanent resident status for the applicant. *Decision of the Center Director*, dated July 23, 1997. The applicant's second spouse did not submit the requested evidence. *Id.* On July 23, 1997 the Center Director found that the evidence of record did not establish that [REDACTED] marriage to the beneficiary was entered into in good faith and not solely for the purpose of obtaining permanent resident status for the beneficiary. *Id.* As such, the Form I-130, Petition for Alien Relative was denied. *Id.*; *Form I-130, Petition for Alien Relative*.

On May 14, 2001 the applicant divorced [REDACTED], and on August 12, 2001, the applicant married his current spouse. *Divorce Certificate; Marriage Certificate*. On May 31, 2002, the applicant's Form I-130, Petition for Alien relative was approved through his current spouse, [REDACTED] *Form I-130, Petition for Alien Relative*.

On October 15, 1997, the Immigration Judge denied the applicant's application for asylum and withholding of deportation and granted the applicant voluntary departure until January 13, 1998. *Order of the Immigration Judge*, dated October 15, 1997. The applicant appealed to the Board of Immigration Appeals which denied his case and affirmed the decision of the Immigration Judge on August 6, 2002. *Decision of the Board of Immigration Appeals*, dated August 6, 2002. The applicant filed a motion to reopen based on his ability to adjust status through his marriage which was denied by the Board of Immigration Appeals on November 12, 2002. *Decision of the Board of Immigration Appeals*, dated November 12, 2002. On January 8, 2003, the applicant filed a second motion to reopen and reconsider with the Board of Immigration Appeals. *Board of Immigration Appeals Filing Receipt*, dated January 8, 2003. On March 26, 2003, the Board of Immigration Appeals denied the applicant's motion to reopen and reconsider. *Decision of the Board of*

Immigration Appeals, dated March 26, 2003. The applicant appealed to the United States Court of Appeals for the First Circuit, and on October 9, 2003, the United States Court of Appeals for the First Circuit granted the applicant a stay of removal. *Decision of the United States Court of Appeals for the First Circuit*, dated October 9, 2003. On December 4, 2003 the applicant was placed under an Order of Supervision. *Order of Supervision*, dated December 4, 2003. On April 22, 2004 the United States Court of Appeals for the First Circuit affirmed the Board of Immigration Appeals' denial of the motion to reconsider. *Decision of the United States Court of Appeals for the First Circuit*, dated April 22, 2004. Additionally, the court dissolved the stay of removal. *Id.*

On June 16, 2004 the applicant filed a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal. *Form I-212*. On June 29, 2004 the applicant left the United States under an order of removal. *Consular Memorandum, Embassy of the United States of America, Bogota, Colombia*, dated July 27, 2006. On January 3, 2006 the applicant's Form I-212 application was denied. *Decision of the Acting Center Director*, dated January 3, 2006. On July 26, 2006 the applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility and a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal. *Form I-601; Form I-212*. On January 18, 2007 the Administrative Appeals Office sustained the appeal on the applicant's Form I-212 application that was denied on January 3, 2006. *Decision of the Administrative Appeals Office*, dated January 18, 2007. On February 21, 2008 the Acting District Director denied the applicant's Form I-601 waiver application and the Form I-212 application that was submitted on July 26, 2006. *Decision of the Acting District Director*, dated February 21, 2008. The Acting District Director found the applicant inadmissible under section 212(a)(9)(B)(i)(II) for having accrued unlawful presence in the United States for more than one year. *Id.* The Form I-601 waiver application is currently before the Administrative Appeals Office.

Section 204(c) of the Act 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] to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General [Secretary of Homeland Security] 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.

There is evidence in the record demonstrating that the applicant entered into his second marriage for the purpose of evading the immigration laws. The burden is on the applicant to show that he did not enter into his second marriage for the purpose of evading the immigration laws. A request for evidence was sent on March 24, 1997 and clearly stated his second spouse had to show the marriage

was entered into in good faith and not for procuring the beneficiary's entry as an immigrant. Although counsel asserts the possibility that the petitioner did not get the request for evidence, the request for evidence was sent to the petitioner's address as found on the Form I-130 which was filed on March 6, 1997. The Center Director found that it was not established that the marriage was entered into in good faith and not solely for the purpose of obtaining permanent resident status. The first Form I-130 petition filed by the applicant's second spouse was denied on this basis, while the second Form I-130 petition filed by the applicant's current spouse was approved. Should the AAO make a determination that the applicant is to be granted a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act only to have the approved Form I-130 petition subsequently revoked on the basis of the applicant's ineligibility under section 204(c) of the Act, the waiver would have no effect.

Therefore, the AAO remands the matter to the Acting District Director to determine whether the approved Form I-130 petition should be revoked. Should the approval of the Form I-130 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 Acting District Director for further proceedings consistent with this decision.