

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**

H16



FILE: [REDACTED] Office: MOSCOW Date: SEP 01 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i).

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director (“field office director”), Moscow, Russia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the field office director for further proceedings consistent with this decision.

The applicant is a native and citizen of Lithuania who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and daughter.

The record reflects that the applicant entered the United States on May 30, 2001 as a J-1 nonimmigrant exchange visitor with authorization to remain until September 30, 2001. The applicant was granted a change of status from J-1 to B-2 nonimmigrant visitor for pleasure, with authorization to extend her stay until December 15, 2001. The applicant remained in the United States after the expiration of her B-2 status. On April 8, 2003, the applicant was placed into removal proceedings pursuant to a Notice to Appear, which indicated that on May 5, 2002 she was employed [REDACTED] without authorization from the former Immigration and Naturalization Service.

On August 26, 2003, the applicant married a U.S. citizen, [REDACTED]. On September 23, 2003, [REDACTED] filed a Form I-130 Petition for Alien Relative on behalf of the applicant. On March 1, 2004, the applicant and [REDACTED] were interviewed separately by a USCIS officer in connection with the Form I-130 petition. On February 25, 2005, the District Director (“district director”), Bloomington, Minnesota, issued a notice of intent to deny the Form I-130 petition. The district director stated that [REDACTED] failed to show that his marriage to the applicant was “anything more than a marriage of convenience and as a haven for [the applicant] who has immigration issues” *Notice of Intent to Deny Prior Form I-130 Petition*, at 5, dated February 25, 2005. The district director added that [REDACTED] “failed to meet [his] burden of proof by establishing by clear and convincing evidence that the [applicant] entered into [their] marriage for purposes of love and affection to establish a life together.” *Id.* The record does not show that [REDACTED] submitted a rebuttal to the notice of intent to deny the petition.

On March 16, 2005, an Immigration Judge granted the applicant voluntary departure, extending until July 13, 2005. The applicant departed the United States on July 11, 2005.

On August 15, 2005, the applicant and [REDACTED] divorced. On July 28, 2006, the applicant married her present husband, [REDACTED] who is a U.S. citizen. October 23, 2006, [REDACTED] filed a Form I-130 Petition for Alien Relative on behalf of the applicant. The petition was approved on February 20, 2007. The applicant seeks admission to the United States as an immigrant based on the approved Form I-130 petition, and she filed the present Form I-601 application for a waiver of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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 her marriage to [REDACTED] for the purpose of evading the immigration laws. Accordingly, pursuant to section 204(c) of the Act she is not eligible to have a Form I-130 relative petition approved on her behalf. The record supports that the approval of the Form I-130 petition filed by [REDACTED] on the applicant's behalf should be revoked.

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 field office director to initiate proceedings for the revocation of the approved Form I-130 petition. Should the approval of the Form I-130 be revoked, the director will issue a new decision dismissing the applicant's Form I-601 application 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 petition is not to be revoked, the field office director shall forward the matter to the AAO for a decision addressing the merits of the applicant's Form I-601 waiver application.

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