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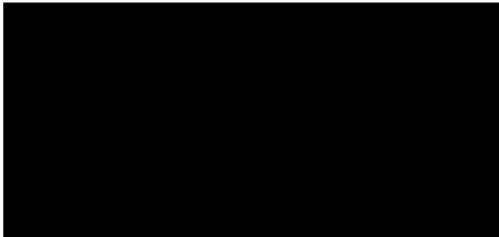
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



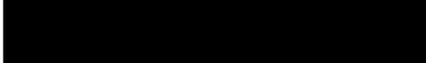
**U.S. Citizenship
and Immigration
Services**

H6



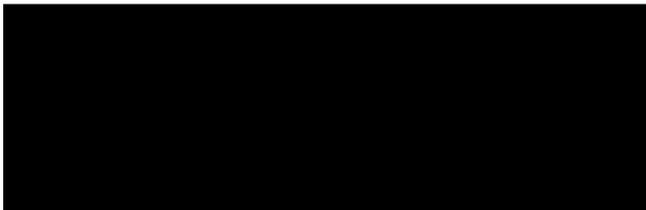
FILE:  Office: MANILA, PHILIPPINES Date:

APR 21 2011

IN RE: 

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)

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.

Perry Rhew, Chief
Administrative Appeals Office

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 The decision of the field office director will be withdrawn and the matter remanded to the field office for further proceedings consistent with this decision.

The applicant is a native and citizen of the Philippines who obtained admission to the United States on April 30, 1994 at San Francisco, California, through the use of a fraudulent passport with the name [REDACTED]. He was found to be inadmissible to the United States under 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 procured admission to the United States through fraud or misrepresentation.¹ He was also found to be inadmissible to the United States pursuant to 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 from August 4, 1999, the date he was ordered removed by an immigration judge, until he departed the United States on December 22, 2002, a period of more than one year. The applicant requires a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States.

In his decision, the Field Office Director noted that the evidence in the record concerning the applicant's first marriage established "a presumption of fraud for entering into a marriage for immigration purposes." *See Decision of the Field Office Director* dated September 24, 2008.

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 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, 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.

¹ The applicant was granted a waiver under section 212(i) of the Act on June 26, 1996 for his use of a fraudulent passport, and therefore no longer requires a waiver for this ground of inadmissibility.

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).

On November 29, 2002, the Acting District Director, West Palm Beach, Florida, issued a Notice of Intent to Deny (NOID) with respect to the applicant's Petition for Alien Relative, Form I-130, finding that there was "substantive and probative evidence in the record" demonstrating that the applicant's prior marriage to [REDACTED] had been entered into for the purposes of circumventing the immigration laws of the United States. No denial was issued regarding this petition as it was withdrawn by his spouse. The applicant's spouse filed another Form I-130 on his behalf and this petition was approved on May 22, 2007. The applicant subsequently filed a Form I-601 with respect to the approved petition and application for an immigrant visa.

The decision of the Field Office Director states that the evidence in the record creates a presumption that his first marriage was fraudulent and the applicant failed to rebut this presumption. The Field Office Director did not, however, make a conclusive determination as to whether the applicant entered into his marriage to [REDACTED] for the purpose of evading the immigration laws of the United States. It is therefore unclear whether the applicant's Form I-130 filed by his current wife was approvable or whether it should have been denied pursuant to Section 204(c) of the Act, 8 U.S.C. § 1154(c). If the applicant's prior marriage were found to have been entered into for the purpose of evading the immigration laws of the United States, he would not be eligible for approval of a subsequent Petition for Alien Relative, and no purpose would be served in addressing the applicant's eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence of more than one year.

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. Therefore, the AAO remands the matter to the Field Office Director to make a determination as to whether the revocation of the approved Form I-130 petition is necessary. Should the approved Form I-130 petition be revoked, the field office director shall 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 the Form I-130 is not to be revoked, then the field office director shall 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 shall be certified for review to the AAO pursuant to 8 C.F.R. § 103.4.

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