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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

**PUBLIC COPY**



H6

Date: Office: ACCRA, GHANA FILE: [REDACTED]

IN RE: **NOV 23 2011** Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 \$630. 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. Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the Field Office Director for further proceedings consistent with this decision.

The record reflects that the applicant is a native and citizen of Guinea 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 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's spouse and two children are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 15, 2011.

On appeal, counsel states that the field office director erred in finding that the applicant failed to provide sufficient evidence to establish extreme hardship. *Form I-290B*, received March 16, 2011.

The record includes, but is not limited to, counsel's appeal brief, the applicant's first spouse's statement, court records and financial documents. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States with a visitor's visa on November 29, 1989, he was granted conditional lawful permanent residence on April 22, 1993, his status was terminated as of April 22, 1995, he was subsequently placed in removal proceedings, he was ordered removed on June 6, 2000, the Board of Immigration Appeals (BIA) affirmed the immigration judge's decision on July 25, 2003, he filed a motion to reopen with the BIA on July 6, 2007, the BIA denied the motion to reopen on September 26, 2007, he filed a petition for review with the Sixth Circuit Court of Appeals on October 26, 2007, and he departed the United States on June 17, 2008. The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions under the Act, until June 17, 2008, the date of his departure. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his June 17, 2008 departure from the United States.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 [Secretary] to have been entered into for the purpose of evading the immigration laws, or (2) the [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

8 U.S.C. § 1154(c). 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)(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). 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 Tavfik*, 20 I&N Dec. 166, 168 (BIA 1990).

The record establishes that on [REDACTED], the applicant married his first spouse, [REDACTED], a U.S. citizen. The applicant's first spouse filed a Form I-130, Petition for Alien Relative, on behalf of the applicant. His application for conditional permanent residence was approved in April 1993 based on the first spouse's I-130 petition. His status was terminated as of April 22, 1995 and he was placed in removal proceedings. At his hearing before the immigration judge on June 6, 2000, the immigration judge stated that he was inclined to believe that the applicant entered into the relationship for the purpose of obtaining a benefit under the Act. The BIA affirmed the decision of the immigration judge on July 25, 2003. In addition, the applicant's first spouse states, in her May 20, 1996 statement, that the applicant married her just to get a green card. On March 11, 2004, the applicant and his first spouse divorced. On [REDACTED], the applicant married [REDACTED], a U.S. citizen. On January 18, 2005, the applicant's second spouse filed a Form I-130 on behalf of the applicant. On February 21, 2006, the applicant's second Form I-130 was approved. On September 22, 2010, the applicant filed a Form I-601 based on his inadmissibility under section 212(a)(9)(B) of the Act. On February 15, 2011, the Field Office Director denied the applicant's Form I-601. Because the record does not show that the applicant entered into his marriage to [REDACTED] in good faith and not for the purpose of evading the immigration laws of the United States, the AAO must conclude that the applicant's prior marriage is within the purview of section 204(c) of the Act as a marriage entered into for the purpose of evading the immigration laws. In that the applicant's prior marriage has been found to have been entered into for the purpose of evading the immigration laws of the United States, he is permanently barred from benefitting from a Form I-130 petition filed by a subsequent spouse or family member. *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 his eligibility for an extreme hardship waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

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 USCIS. 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 approved Form I-130 petition be revoked, the Field Office 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 Field Office 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 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.