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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy
PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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Date: OCT 1 1 2011 Office: ACCRA, GHANA FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

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, Accra, Ghana, 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 The decision of the field office director will be withdrawn and the matter remanded to the field office for further proceedings consistent with this decision.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 Gambia who obtained admission to the United States with an F-1 student visa on November 27, 1994. The applicant thereafter married a United States citizen, and filed an application for adjustment of status. On August 27, 2004, the applicant's adjustment of status application was denied. The applicant was then put into removal proceedings and ordered removed on August 26, 2005. The applicant departed the United States while subject to a removal order in or around February 2007. The applicant is therefore 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 26, 2005, the date she was ordered removed by an immigration judge, until she departed the United States in February of 2007, a period of more than one year. She was also 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 sought to procure an immigration benefit by fraud or material misrepresentation. The applicant requires a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), in order to return to the United States.

In her decision, the Field Office Director noted the first Petition for Alien Relative (Form I-130) filed on behalf of the applicant was "denied upon a determination that the underlying marriage was a sham entered into for immigration purposes." *See Decision of the Field Office Director* dated April 23, 2009; *See also Decision of the District Director, Dallas, Texas,* dated December 13, 2004. Further, the Field Office Director indicated that the applicant's "more recent Form I-130 [her] present husband filed for [her] was approved in error." *See Decision of the Field Office Director* dated April 23, 2009.

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.

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 December 13, 2004, the District Director, Dallas, Texas, indicated that the petitioner for the applicant's first Form I-130, [redacted]ithdrew his petition, admitting that the marriage was not bona fide. *See Decision of the District Director, Dallas, Texas*, dated December 13, 2004. Further, the Immigration Judge in an oral decision found, after lengthy testimony and several witnesses, that the marriage entered into between [redacted] and the applicant was "not bona fide." *See Oral Decision of the Immigration Judge, Dallas, Texas*, dated August 26, 2005. The applicant remarried and her current spouse filed a Form I-130 on her behalf, which was approved on July 5, 2007. The applicant subsequently filed a Form I-601 with respect to the approved petition and application for an immigrant visa.

It is unclear whether the applicant's Form I-130 filed by her current husband 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, she 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)(v) of the Act for unlawful presence of more than one year.

Pursuant to 8 C.F.R. § 205.2, the approval of Form 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.