

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

[REDACTED]

tlc

Date: DEC 17 2012

Office: LIMA, PERU

FILE: [REDACTED]

IN RE: [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)

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.

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Peru who was found inadmissible 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 June 13, 2000 until February 26, 2003 and from January 24, 2004 until November 1, 2006, each of the periods for more than one year. The applicant is married to a U.S. citizen and 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), in order to return to the United States.

In her decision, the Field Office Director, Lima, Peru, notes that the applicant's first wife, who submitted a Petition for Alien Relative (Form I-130) on his behalf, was married to seven other men for whom she filed immigration petitions. *See Decision of the Field Office Director*, dated August 16, 2011. The Field Office Director finds it is "highly unlikely that [the applicant] entered into [his] marriage with her for reasons other than to obtain an immigration benefit." *Id.* Further, the Field Office Director indicates that the applicant is "very likely inadmissible under section 204(c) of the INA," for which there is no waiver of inadmissibility and that, if such section applies, the most recent Form I-130 should not have been approved. *Id.*

On appeal, the applicant's attorney asserts that the director erred in applying the inadmissibility ground of section 204(c) of the INA because a finding has not been made regarding whether the applicant attempted or conspired to enter into a marriage for the purpose of evading immigration laws. Further, he states that the applicant's Form I-130 has been approved and that there has not been any notice given to the applicant regarding intentions to revoke the petition.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); briefs written on behalf of the applicant; relationship and identification documents for the applicant, qualifying spouse and their child; letters from the qualifying spouse, the applicant, their parents, other family members, friends and their church; a certification from the qualifying spouse's therapist and a psychological evaluation; medical documentation regarding their child and the applicant's father; banking statements and bills indicating that the applicant and his ex-wife shared the same address; financial documentation; academic documentation regarding the qualifying spouse; an Application to Register Permanent Residence or Adjust Status (Form I-485) and an approved Form I-130. The entire record was reviewed and considered in rendering a decision on the appeal.

The record shows that the applicant obtained admission to the United States as a visitor and entered in Atlanta, Georgia on December 12, 1999 with permission to stay until June 13, 2000. The applicant did not depart on June 13, 2000 and thereafter married a U.S. citizen, and filed an application for adjustment of status and a petition for alien relative on February 26, 2003. On January 24, 2004, the applicant's adjustment of status application was denied. The applicant was then put into removal proceedings and granted voluntary departure on November 1, 2006 with permission to depart no later than March 1, 2007. The applicant provided a copy of his passport

with a stamp indicating his return to Peru on March 1, 2007. The applicant accrued unlawful presence in the United States from June 13, 2000 until February 26, 2003 and from January 24, 2004 until November 1, 2006, each of the periods for more than one year. The applicant is therefore inadmissible to the United States.

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).

In her August 16, 2011, the Field Office Director, Lima, Peru, indicates that the applicant's first marriage was likely entered into for purposes of obtaining immigration benefits. Further, the record reflects that the applicant's first wife was married to seven other men for whom she also filed immigration petitions. As a result, the applicant's first Form I-130 was denied. The applicant remarried and his current spouse filed a Form I-130 on his behalf, which was approved on June 3, 2010. 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 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 Form

I-130, 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 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 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 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.