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
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: JAN 18 2012 Office: AMMAN, JORDAN FILE: [redacted]

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).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 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, Amman, Jordan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded to the field office director.

The applicant is a native and citizen of the Jordan who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant failed to establish extreme hardship to a qualifying relative. *See Decision of the District Director*, dated June 25, 2009. On appeal, the applicant contends that the denial of the waiver is causing extreme hardship to his spouse and child. *See Form I-290B, Notice of Appeal*, dated July 28, 2009.

The AAO conducts appellate review on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in arriving at a decision on the appeal.

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 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.

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 Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

The record reflects that the applicant married on December 27, 1996. She filed a Petition for Alien Relative on behalf of the applicant on March 20, 1997. *See Form I-130, supra.* The former INS approved the Form I-130 on April 9, 1998. *See id.* During a subsequent investigation the applicant's former spouse admitted that she and the applicant were not living as husband and wife, and that the applicant was residing with and had a child with another woman. *Record of Sworn Statement*, August 31, 1999. She withdrew her petition for alien relative.

The applicant and his former spouse divorced and then the applicant married his current spouse on April 30, 2001. The applicant's spouse filed a Petition for Alien Relative on behalf of the applicant on May 9, 2007, and USCIS approved the Petition on July 31, 2007. *See Form I-130, Petition for Alien Relative, supra.*

An independent review of the record establishes substantial and probative evidence that the applicant's marriage to his former spouse was entered into for the purpose of evading the U.S. immigration law. The sworn statement in the record indicates that the applicant's former spouse had never met the applicant until they married, then never resided with the applicant as husband and wife while the applicant resided with and fathered a child by another woman. *Withdrawal of Petition on Behalf of Relative*, dated August 31, 1999.

Because the applicant's marriage appears to have been entered into for the purpose of evading the immigration laws of the United States, the applicant is permanently barred from obtaining a visa to enter the United States. *See* 8 U.S.C. § 1154(c). In light of this permanent bar, no purpose would be served by addressing the applicant's contentions regarding her eligibility for an extreme hardship waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, and the appeal will be dismissed.

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 initiate proceedings for the revocation of the approved Form I-130 petition. Should the approved Form I-130 petition be revoked, the district 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 district 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.