



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

(b)(6)

Date: **APR 23 2013**

Office: BANGKOK, THAILAND

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 APPLICANT:  
[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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Egypt 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 admission within 10 years of his last departure. He also was found inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having a voluntary departure order converted into an order of removal when he failed to comply with its terms. The applicant is married to a U.S. citizen. In the instant appeal, he seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse and child.

In her decision, the Field Office Director found that the applicant demonstrated that his qualifying spouse would suffer extreme hardship if he was barred from re-entering the United States. However, the Field Office Director denied the waiver application as a matter of discretion noting, among other issues, that the applicant entered into his first marriage for the purpose of evading the immigration laws of the United States. *See Decision of the Field Office Director*, dated July 6, 2012.

On appeal, the applicant's attorney asserts that the Field Office Director erred denying the applicant's waiver application on discretionary grounds. He contends that the denial is improper because the applicant was not formally charged with marriage fraud or arrested, indicted or otherwise made to answer a complaint of marriage fraud. He also indicates that the applicant's criminal arrests were dismissed and that the applicant did not file a frivolous asylum application.

The record contains, but is not limited to, an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212)<sup>1</sup>; an appeal brief; relationship and identification documents for the applicant, qualifying spouse, their child and the applicant's first spouse; affidavits from the applicant, qualifying spouse and her sister; a letter and drawing from their child; medical documentation for the qualifying spouse and their child; financial documentation; photographs; a letter from the applicant's prior employer; court documents for the applicant; an Application to Register Permanent Residence or Adjust Status (Form I-485); an Application for Immigrant Visa and Alien Registration (Form DS-230); two Petitions for Alien Relative (Forms I-130); and an Application for Asylum and Withholding of Removal (Form I-589). The entire record was reviewed and considered in rendering a decision on the appeal.

The record shows that the applicant entered the United States on or about November 24, 2000 as a visitor with permission to stay until May 23, 2001. The applicant was placed into immigration proceedings in November 2002. He requested asylum in 2003 and withdrew his application in 2004. The immigration judge granted him voluntary departure until May 12, 2005. After not complying with the terms of the order, he was subsequently ordered removed on December 27, 2006. The applicant was removed on

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<sup>1</sup> The applicant's Form I-212 was denied on the same day as his Form I-601, because according to the Field Office Director, granting that application would serve no purpose. In the instant appeal, we are considering only the applicant's Form I-601 appeal, as a Form I-290B was not submitted appealing the Form I-212's denial.

January 18, 2007. He accrued more than one year of unlawful presence in the United States between May 24, 2001 and his removal on January 18, 2007. The applicant is therefore inadmissible to the United States. Counsel does not contest the applicant's inadmissibility.

The applicant's first wife filed a Form I-130 for the applicant that was denied on December 4, 2006, because in a sworn statement she confessed that their marriage was a sham and entered into solely to help the applicant obtain immigration benefits. After they divorced in 2007, the applicant married his current spouse, who filed another Form I-130 on his behalf that was approved on March 13, 2009. A Notice of Intent to Revoke, dated April 25, 2012, was sent to the applicant's spouse based on his inability to qualify for an immigrant visa after his first marriage was found to be fraudulent and entered into for the purpose of evading the immigration laws of the United States. The applicant's spouse did not submit a rebuttal or additional evidence to contest the findings in the notice, and her Form I-130 was revoked on May 30, 2012.

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.

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).

Because the applicant's first marriage was found to have been entered into for the purpose of evading the immigration laws of the United States, he is permanently barred from obtaining an immigrant visa to enter the United States. See 8 U.S.C. § 1154(c). The regulations at 8 C.F.R. § 204.2(a)(ii) do not require an individual to have been convicted of or prosecuted for marriage fraud. As such, the applicant's attorney contention that the applicant's lack of an arrest, indictment or charge for marriage fraud exempts him from

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such a finding does not appear to have a basis in law, and counsel cites no legal authority to support his position. Furthermore, the applicant's spouse failed to respond to the notice advising her of the applicant's previous actions and the applicability of the marriage-fraud prohibition. In light of this prohibition, no purpose would be served by addressing the applicant's contentions regarding his eligibility for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, and the appeal will be dismissed.

On May 30, 2012, the applicant's Form I-130 was revoked based on finding that his first marriage was entered into for the purposes of evading U.S. immigration laws. The AAO finds that since the applicant's Form I-130 has been revoked, he is not the beneficiary of an approved petition and he is ineligible to obtain a visa to enter the United States. Accordingly, the appeal will be dismissed, because there would be no purpose served in granting a waiver of inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.