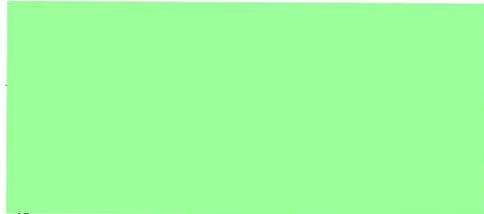


(b)(6)

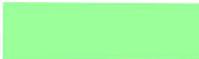
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

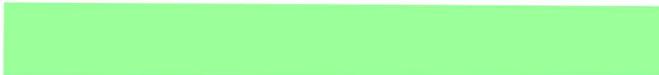


U.S. Citizenship
and Immigration
Services



DATE **FEB 25 2013** Office: ACCRA, GHANA

File: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal line extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the Field Office Director.

The applicant is a native and citizen of Nigeria. He was found to be 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 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 was entered into a marriage for the purpose of evading the immigration laws of the United States, and he is barred from benefitting from a subsequent Form I-130 petition pursuant to section 204(c) of the Act. The Field Office Director determined that no purpose would be served in assessing whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 31, 2011.

On appeal, the applicant's spouse asserts that the Field Office Director should not give conclusive effect to the finding of marriage fraud in a prior proceeding, that the applicant and his former spouse were legitimately married and that she will suffer extreme hardship if the applicant is not admitted. *Attachment, Form I-290B*, dated February 23, 2011.

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). United States Citizenship and Immigration Services (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 establishes that the applicant married his former spouse in 1993, and that she filed an I-130 petition on behalf of the applicant. The petitioner in that case, the applicant's prior spouse, later entered a sworn statement withdrawing the Form I-130 and detailing the fraudulent nature of their marriage, stating they had never lived together as husband and wife. At his adjustment interview on July 26, 1999, the applicant was found ineligible for adjustment of status based on the fact that he entered into a marriage for immigration purposes.

The applicant married his current spouse on February 14, 2003, less than 60 days after divorcing his former spouse. On February 25, 2010, the Form I-130 filed by the applicant's current spouse was approved.

The applicant and his spouse both assert on appeal that they do not understand why the applicant's former spouse would make such assertions, and each testify that the relationship between the applicant and his former spouse was legitimate. The applicant states that former roommates witnessed visitations by his prior spouse but that he was unable to locate them to provide witness statements.

The AAO does not find the applicant's explanation that he and his former spouse continued to see each other on occasion during their marriage sufficient to establish that he had a legitimate marital relationship with his former spouse. The assertions of the applicant are not supported by evidence, and do not outweigh the direct testimony of the applicant's former spouse. The record supports 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. If the applicant's prior marriage was entered into for the purpose of evading the immigration laws of the United States, he is permanently barred from having a Form I-130 petition approved on his behalf as the spouse of a U.S. citizen. *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 a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act. As noted above, the Field Office Director denied the applicant's Form I-601 application for a waiver on that basis, and he noted that he was returning the Form I-130 petition to the California Service Center for possible revocation.

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 await the determination of whether the Form I-130 on the applicant's behalf should be revoked. 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.

The Field Office Director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. The Field Officer Director denied the applicant's Form I-212 application on the basis that the applicant's Form I-601 application was denied and the applicant failed to obtain a waiver under section 212(a)(9)(B)(v) of the Act. Therefore, the AAO also remands the Form I-212 to the Field Office Director to await the determination of whether the Form I-130 on the applicant's behalf should be revoked, and whether the Form I-601 application is approved. Should the Form I-601 be denied due to revocation of the Form I-130 petition, the Field Office Director will issue a new decision denying the applicant's Form I-212 due to denial of the Form I-601 waiver. In the alternative, should the Form I-601 be approved, the Field Office Director will issue a new decision addressing the merits of the applicant's Form I-212 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.