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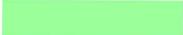
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

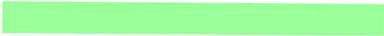


SEP 05 2013

Date:

Office: MOSCOW

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Moscow, Russia, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be remanded to the Field Office Director for further action.

The record establishes that the applicant is a native of Armenia and citizen of Russia who entered the United States with a nonimmigrant visa in March 1997 and remained beyond the period of authorized stay. The applicant's request for asylum and withholding of removal was denied in April 2005. In September 2006, the applicant's appeal was dismissed by the Board of Immigration Appeals (BIA). Subsequent motions were denied by the BIA in December 2006 and March 2007. The applicant did not depart the United States until February 20, 2009. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and lawful permanent resident mother.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 14, 2011.

On appeal, the AAO determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The appeal was subsequently dismissed. *Decision of the AAO*, dated February 25, 2013.

In support of the instant motion to reopen and reconsider, counsel submits the following: a brief; letters from the applicant's spouse and her two daughters; medical and academic information pertaining to the applicant's spouse's daughter, [REDACTED] and financial documentation. The entire record was reviewed and considered in rendering this decision.

The record establishes that in April 2006, the applicant's then wife, [REDACTED] ("Ms. [REDACTED]"), a U.S. citizen, filed the Form I-130, Petition for Alien Relative (Form I-130), on behalf of the applicant. A Notice of Intent to Deny the Form I-130 was issued in March 2007, requesting additional documentation with respect to Ms. [REDACTED]'s marriage to the applicant as a result of numerous discrepancies during the interview. Discrepancies listed by the district director included, but were not limited to: dates and times when specific events referenced in the interview occurred; individuals who had been present at their marriage ceremony; where the applicant and Ms. [REDACTED] resided; and the lack of knowledge of each other's backgrounds and family. *See Notice of Intent to Deny the Form I-130*, dated March 5, 2007. On April 3, 2007, the Form I-130 was denied by the district director, based on a finding that Ms. [REDACTED] had failed to establish a valid relationship with the applicant for the purposes of immigration. *See Decision to Deny the Form I-130*, dated April 3, 2007. The applicant and Ms. [REDACTED] divorced in 2008. In December 2009, the applicant's current

U.S. citizen spouse, [REDACTED] filed a Form I-130 on the applicant's behalf, which was approved in May 2010.

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).

Based on the findings made by the district director in 2007 with respect to the Form I-130 filed by Ms. [REDACTED] on behalf of the applicant, the record does not establish that the applicant entered into his marriage to Ms. [REDACTED] in good faith and not for the purpose of evading the immigration laws of the United States. The AAO must conclude 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. In that the applicant's prior marriage has been found to have been entered into for the purpose of evading the immigration laws of the United States, no visa petition may be approved on his behalf. See 8 U.S.C. § 1154(c). In light of this permanent bar, no purpose would be served in addressing the applicant's contentions on motion regarding his eligibility for an extreme hardship waiver of inadmissibility under section 212(i) of the Act.

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 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.

ORDER: The matter is remanded to the field office director for further proceedings consistent with this decision.