



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

(b)(6)

DATE: **SEP 18 2013**

Office: BANGKOK

IN RE:

PETITION:

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:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Bangkok, Thailand, denied the waiver application. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion is granted and the prior AAO decision is affirmed.

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 again seeking admission within 10 years of his last departure from the United States. The applicant was also found inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been previously removed from the United States. The record reflects that the applicant had been granted voluntary departure until May 2005, but when the applicant failed to comply with its terms the order converted to an order of removal in December 2006. The applicant was removed January 2007. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Field Office Director found that the applicant had demonstrated that his qualifying spouse would suffer extreme hardship if he is barred from entering the United States, but denied the waiver application as a matter of discretion noting that the applicant had 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 AAO found that since the applicant's Form I-130, Petition for Alien Relative had been revoked he is not the beneficiary of an approved petition and is ineligible to obtain a visa to enter the United States. The AAO noted that a Form I-130 filed by the applicant's first wife was denied in 2006 because in a sworn statement she confessed that they entered into their marriage solely to help the applicant obtain immigration benefits. The AAO further noted that the Form I-130 filed by the applicant's current spouse had been approved in 2009, but a subsequent Notice of Intent to Revoke was sent on April 25, 2012, and the applicant's spouse failed to submit a rebuttal or additional evidence to contest the finding that the applicant's first marriage was fraudulent. The AAO noted that the Form I-130 was then revoked on May 30, 2012. *See Decision of the AAO*, dated April 23, 2013.

On motion counsel for the applicant asserts that USCIS and the AAO have not explained the evidence upon which the conclusion of fraud is made and that a Notice of Intent to Revoke the approved Form I-130 was never received. With the motion counsel submits a brief and a statement from the applicant's current spouse. The entire record was reviewed and considered in rendering this decision.

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 C.F.R. § 204.2(a)(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.

On motion counsel asserts that the applicant has never been charged with fraud by any agency and there has been no explanation of the evidence upon which the conclusion of fraud is made. Counsel asserts that nothing presented reveals any evidence of an attempt to commit marriage fraud and the positive factors establishing a finding of extreme hardship outweigh an allegation that the applicant attempted or conspired to attempt marriage fraud. Counsel acknowledges the finding that the applicant's first spouse made a statement that their marriage was solely to help the applicant obtain immigration benefits, but states that the applicant believes that the statement by his first spouse was coerced. Counsel also asserts that a separate Motion to Reopen will be filed regarding the revoked I-130.¹

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 the instant case, as the applicant's first marriage was found 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). It is not necessary under 8 C.F.R. § 204.2(a)(ii) that the alien have been convicted of or prosecuted for marriage fraud to be subject to a prohibition of approval of a visa petition filed on behalf of the alien. As the applicant is permanently barred from obtaining a visa to the United States, no

¹ The AAO notes that an I-290B Notice of Appeal or Motion was filed on June 13, 2013, for the revoked Form I-130, but the motion has yet to be adjudicated.

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.

The viability of the Form I-601, Application for Waiver of Grounds of Inadmissibility, is dependent on an application for an immigrant visa that is, in turn, based on an approved Form I-130, Petition for Alien Relative. The Petition for Alien Relative filed on behalf of the applicant was approved, and the approval was subsequently revoked on May 30, 2012. The applicant currently has no approved I-130 petition.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted and the prior AAO decision is affirmed.