



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-S-T-

DATE: MAR. 3, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY

The Applicant, a native of India and citizen of Canada, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) §§ 212(i) and 212(a)(9)(B)(v), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v). The Director, Nebraska Service Center, denied the application. The matter is now before us on appeal. The matter will be remanded for further proceedings consistent with this opinion.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering into a marriage to a U.S. citizen for the purpose of receiving an immigration benefit and using a fraudulent passport and visa to enter the United States and to seek entry using fraudulent documents. The Applicant was also found inadmissible under 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 more than one year and again seeking admission within 10 years of the date of his removal from the United States. The Applicant is the beneficiary of a Form I-130, Petition for Alien Relative, that his U.S. citizen brother filed on his behalf.

In a decision dated February 6, 2015, the Director concluded that the Applicant had established that his qualifying relatives would suffer extreme hardship as a result of his inadmissibility but because the Applicant had not filed a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, he would remain inadmissible to the United States even if the Form I-601, Application for Waiver of Grounds of Inadmissibility, were approved.¹ The Director determined that the Applicant's decision not to file Form I-212 was a negative factor that warranted denial of the Form I-601 as a matter of discretion.

On appeal, the Applicant asserts that the Director erred in finding he was inadmissible pursuant to section 212(a)(9)(A)(i) of the Act, because the Applicant received consent to reapply and permission to enter as a nonimmigrant in 2007; therefore he does not need to file a Form I-212. He cites to the Form I-212 instructions to support his position that if consent to reapply is granted for nonimmigrant purposes, it is valid for all future immigrant and nonimmigrant purposes.

¹ The Applicant was also found inadmissible under section 212(a)(9)(A)(i) for having twice been ordered removed.

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The record includes, but is not limited to: a brief; documents establishing identity and relationships; medical records of the Applicant's parents; financial records; statements from the Applicant, his spouse, parents, brother, and children; and letters attesting to the Applicant's good moral character. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the Applicant initially entered the United States without inspection and on [REDACTED] 1992, he married a U.S. citizen who filed a Form I-130, Petition for Alien Relative, on his behalf that was approved on April 23, 1993. The Applicant traveled to [REDACTED] to apply for his conditional resident visa on October 14, 1993, which was approved. On December 20, 1993, the Applicant sought admission into the United States as a conditional permanent resident. His inspection was deferred, and after an interview with U.S. immigration officers, the Applicant's spouse withdrew her petition. In a decision dated January 10, 1994, the Immigration and Naturalization Services Director, [REDACTED] District, revoked the Form I-130 petition based on the Petitioner's withdrawal request and added that "it has been proven [the Applicant] entered into a fraudulent marriage for the purpose of obtaining a benefit in the United States." On [REDACTED] 1994, the Applicant was placed into immigration proceedings, and on [REDACTED] 1994, he was ordered excluded and deported.

The record also reflects that Applicant, in India in 1995, purchased an Indian passport in the name of [REDACTED] and obtained a visa using that identity from the U.S. Consulate in [REDACTED]. He was admitted under that identity into the United States on July 14, 1995, as a B-1 nonimmigrant visitor. He left the United States on March 14, 1998. On May 20, 1999, the Applicant sought to enter the United States with the same fraudulent passport and another visa. During his inspection at the [REDACTED] port of entry on May 20, 1999, the Applicant admitted in a sworn statement that he had entered once before and sought to enter again using fraudulent documents. He also stated that he used these documents because he could not get a visa using his own identity and documents. On [REDACTED] 1999, he again was ordered removed, this time pursuant to the expedited-removal provisions of section 235(b)(1) of the Act. Because of difficulties obtaining travel documentation to go to India, he was placed on an order of supervision until his expedited-removal order could be executed. He departed for Canada in December 1999, thereby executing his removal order.

According to the evidence in the record, the Applicant subsequently became a Canadian citizen. His second and present wife obtained a U.S. nonimmigrant E-3 treaty investor visa, and the Applicant applied for a derivative E-2 visa and a nonimmigrant visa waiver, which were both approved in 2007. The record indicates that the Department of State recommended waivers under sections 212(a)(6)(C), 212(a)(9)(B), and 212(a)(9)(A) of the Act, which were approved by U.S. Customs and Border Protection. The Applicant's 2007 nonimmigrant E-2 visa, valid for one year, was annotated with the statutory inadmissibilities that were waived and the words, "Consent to Reapply Granted."

In 2012, the Applicant applied again for a derivative E-2 visa and a Form I-192, Application for Advance Permission to Enter as Nonimmigrant, which were approved in 2014. With his Form I-192 waiver request, the Applicant submitted a statement stating that his first wife, who he married in 1992, "filed an I-130 for [him] but withdrew that petition at the visa interview as the marriage was

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not genuine.” The Applicant subsequently filed the instant Form I-601, for an immigrant-visa waiver, on February 13, 2013, stating on page 4 that he “married a U.S. citizen on [REDACTED] 1992, . . . in a fake marriage.”

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

(1)The Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

As described above, the record reflects that the Applicant entered into a marriage in 1992 solely to gain a benefit under the Act. In addition, he was admitted into the United States using a fraudulent passport and visa on July 14, 1995. On May 20, 1999, the Applicant sought to enter the United States again with fraudulent documents. The Applicant is therefore inadmissible under section 212(a)(6)(C) of the Act, for making a material misrepresentation to gain entry into the United States.

The Director also concluded that the Applicant is inadmissible under section 212(a)(9)(B) of the Act, though he does not specify the exact period of his unlawful presence in the United States in the denial decision. We will not address this finding of inadmissibility in the instant decision, however, because the Applicant does not contest it, and it appears the Applicant is ineligible to immigrate because of his 1992 sham marriage.

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 [Secretary] to have been entered into for the purpose of evading the immigration laws, or (2) the [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

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No waiver is available for violation of section 204(c) of the Act. 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)(1)(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). U.S. 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).

After a careful *de novo* review of the record, we find that the Applicant is subject to section 204(c) of the Act for entering into a marriage to evade the immigration laws. The record reflects that the Applicant married [REDACTED] on [REDACTED] 1992, and that a Form I-130 she filed on his behalf was approved on April 27, 1993. The record also reflects that she withdrew her Form I-130 on January 10, 1994. In the instant Form I-601, the Applicant states that he had entered into "a fake marriage," which is similar to the statement he made when he applied for his nonimmigrant waiver in 2012. The record includes additional documentary evidence concerning U.S. immigration officers' conclusions in 1994 and 1999 that the Applicant's marriage to [REDACTED] was a sham marriage.

Given the Applicant's admissions to having committed marriage fraud and the evidence in the record concerning previous immigration findings regarding his marriage fraud, this matter is remanded to the Nebraska Service Center for a determination on whether the Applicant is subject to section 204(c) of the Act. If the Director finds that the Applicant sought to be accorded an immediate relative or preference status as the spouse of a U.S. citizen by reason of a marriage determined to have been entered into for the purpose of evading immigration laws, the Director shall make a finding that the Applicant is subject to section 204(c) of the Act and therefore permanently barred from obtaining approval of an immigrant visa petition. *See* 8 U.S.C. § 1154(c).

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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. Should the approved Form I-130 petition be revoked, the 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 Director will issue a new decision addressing the merits of the Applicant's Form I-601 waiver application.

ORDER: The decision of the Director, Nebraska Service Center, is withdrawn. The matter is remanded to the Director, Nebraska Service Center, for further proceedings consistent with the foregoing opinion.

Cite as *Matter of B-S-T-*, ID# 14894 (AAO Mar. 3, 2016)