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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 14 2013 OFFICE: ACCRA, GHANA

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(d)(11) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(d)(11) and 1182(i)

ON BEHALF OF APPLICANT:

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and was before the Administrative Appeals Office (AAO) on appeal. The matter was remanded to the Field Office Director for further proceedings. The applicant then filed a motion to reopen and reconsider with the AAO. The motion will be dismissed as unnecessary.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly aided another alien who was not his daughter to try to enter the United States in violation of the immigration law. The applicant also was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission to the United States through fraud or misrepresentation. Additionally, the applicant was found to have violated section 204(c) of the Act, 8 U.S.C. § 1154(c), for having entered into a marriage to evade U.S. immigration laws. The applicant is the son of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130) his mother filed on his behalf.

The Field Office Director concluded that the applicant was inadmissible under sections 212(a)(6)(C)(i) and 212(a)(6)(E)(i) of the Act and denied the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The Field Office Director further denied the applicant's Form I-601 as a matter of discretion, indicating that under section 204(c) of the Act, the applicant also is subject to a prohibition of the approval of any visa petition filed on his behalf for having entered into a fraudulent marriage for the purpose of evading U.S. immigration laws to obtain a benefit. *Decision of Field Office Director*, dated August 20, 2009.

On appeal, the applicant asserted that he did not enter into a fraudulent marriage and that he is eligible for a waiver because of the extreme hardship his mother would experience.[1] *Form I-290B, Notice of Appeal or Motion*, dated September 14, 2009.

The AAO found that the Form I-130 filed by the applicant's mother on his behalf may be revocable, because the record includes evidence of previous findings that the applicant had entered into a marriage to evade U.S. immigration laws. Because the applicant may not benefit from a visa petition given the marriage-fraud prohibition, the AAO also found that no purpose would be served in addressing the applicant's contentions regarding his eligibility for a waiver of inadmissibility under section 212(i) of the Act. The AAO remanded the matter to the Field Office Director to initiate proceedings to revoke the applicant's mother's Form I-130. If the Field Office Director determined that the Form I-130 would be revoked, she would issue a new decision dismissing the Form I-601 as moot. Alternatively, if the Field Office Director found that section 204(c) does not apply to the applicant and the Form I-130 would not be revoked, the Field Office Director would issue a new decision discussing the merits of the applicant's Form I-601. *Decision of the AAO,* dated February 15, 2012.

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[1] The applicant did not address his inadmissibility under section 212(a)(6)(E)(i) of the Act on appeal or on motion.

On motion, counsel contests the findings that the applicant may be subject to section 204(c) of the Act and asserts that "the denial of the visa petition and waiver" were arbitrary and capricious. He also provides new evidence to show that the applicant's marriage was in good faith. *Form I-290B, Notice of Appeal or Motion*, dated March 7, 2012.

The AAO, by remanding the matter to the Field Office Director, did not reach a final decision on the merits of the applicant's appeal of his Form I-601 denial. The AAO found that the applicant's Form I-130 may be subject to revocation, given the evidence of previous findings of marriage fraud in the record. The determination concerning revocation of the Form I-130 must be made in the course of adjudicating the visa petition. *See Matter of Rahmati*, 16 I&N Dec. at 359. If the Form I-130 is revoked, the Form I-601 waiver will be dismissed as moot, because no purpose would be served in approving it without an immigrant visa available to the applicant.

Counsel's assertion on motion that the applicant is not subject to the marriage-fraud provision of the Act and its related regulation pertains to a determination concerning the applicant's Form I-130. The AAO does not have jurisdiction to review appeals or motions concerning Form I-130 decisions.[2] Moreover, the record reflects that though the Field Office Director has initiated review of the applicant's Form I-130 to consider whether revocation is appropriate, the review is not yet complete. The matter, therefore, still lies with the Field Office Director, who upon completion of the review will issue a new decision concerning the Form I-601, as directed in the AAO's previous decision.

Because the applicant's appeal was not adjudicated on the merits of the Form I-601and the matter currently lies with the Field Office Director, the applicant's motion to reopen and reconsider the AAO's decision to remand the matter to the Field Office Director must be dismissed. The motion is unnecessary as there is still no purpose in reviewing the merits of the Form I-601, the only matter before the AAO.

ORDER: The motion to reopen and reconsider is dismissed.

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[2] The AAO has jurisdiction over appeals pursuant to 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), except that petitions for approval of schools under § 214.3 are now the responsibility of Immigration and Customs Enforcement (ICE), and applications for S nonimmigrant status under § 214.2(t) are now the responsibility of the Fraud Detection and National Security (FDNS) office of USCIS. Although 8 C.F.R. § 103.1(f)(3)(iii) was subsequently omitted from the Code of Federal Regulations, courts have recognized that DHS continues to delegate appellate authority to the AAO consistent with that regulation. *See U.S. v. Gonzalez & Gonzalez Bonds and Insurance Agency, Inc.*, 728 F.Supp.2d 1077, 1082- 1083 (N.D. Cal. 2010); *see also Rahman v. Napolitano*, 814 F.Supp.2d 1098, 1103 (W.D. Washington 2011).