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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



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

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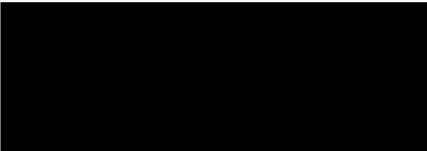
Office: NEWARK FIELD OFFICE

Date: **JUL 10 2009**

IN RE: Applicant: [Redacted]

Petition: Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Newark, New Jersey denied the application for adjustment of status (Form I-485) and certified her decision to the Administrative Appeals Office (AAO). The field office director's decision will be withdrawn and the matter remanded for the issuance of a new decision based on the statutory requirements contained in the law.

The applicant is a native and citizen of the Dominican Republic, born on February 14, 1975, who submitted a Form I-485, Application to Register Permanent Residence or Adjust Status on June 3, 2008 pursuant to section 245 of the Immigration and Nationality Act (the Act), U.S.C. § 1255. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his United States citizen father.

The field office director denied the application in the exercise of discretion upon finding that a previously filed Form I-130, Petition for Alien Relative, on behalf of the applicant had been withdrawn based on marriage fraud. The director noted that a United States Citizenship and Immigration Services (USCIS) officer had interviewed and informed the applicant that information in the file proved that the applicant's September 22, 2006 marriage to a United States citizen had been entered into to circumvent immigration law. The field office director determined that the applicant had not established that he was eligible for adjustment of status and that his application merited a favorable exercise of discretion.

The field office director certified her decision to the AAO for review on April 7, 2009, and as of this date, the AAO has not received any brief or additional evidence from either counsel or the applicant.<sup>1</sup> The record, thus, is considered complete.

Upon review of the matter on certification, the AAO finds that the field office director improperly decided the matter based on an exercise of her discretion. In this matter, the record shows that the

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<sup>1</sup> The AAO observes that counsel for the applicant submitted a Form I-290B, Notice of Appeal, received May 27, 2009. Counsel asserted that the field office director's decision to deny the application for adjustment of status was capricious and not based on any rhyme or reason. The AAO notes that it does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement. Even if the Notice of Appeal was considered a response to the director's decision to certify the matter to the AAO, the assertions contained therein do not identify specifically any erroneous conclusions of law or statements of fact made by the field office director. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation and he is barred from receiving any benefit under section 204(c) of the Act. The field office director, in this matter, should have first determined whether the applicant met the statutory or “threshold” requirements contained in the law before determining that the matter should be denied as a matter of discretion. The field office director’s decision to deny the application based on a matter of discretion is withdrawn. Upon remand of the matter, the director should review the applicant’s inadmissibility based on section 212(a)(6)(C)(i) of the Act and determine whether the applicant is subject to section 204(c) of the Act, in accordance with the following discussion.

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

In general

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 chapter is inadmissible.

Although there is a waiver available for an alien subject to section 212(a)(6)(C)(i) inadmissibility ground, the waiver would serve no purpose in this matter as approval of the petition is precluded pursuant to section 204(c) of the Act. Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if – (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws[.]

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

*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.

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, 539 (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).

Upon review of the record, the AAO finds a photocopy of a marriage certificate between the applicant and P-E-<sup>2</sup> showing the date of the marriage as September 22, 2006 in the State of New Jersey. The applicant's spouse filed a Form I-130 on January 16, 2007. The applicant also filed a Form I-485, on or about January 15, 2007 based on his spouse's Form I-130. The applicant's spouse and the applicant were interviewed by USCIS officers on January 30, 2008. When asked, the applicant stated: that he and his spouse had never lived together; that they had consummated the marriage; and that he married P-E- because they liked each other and she could help him get his papers. When asked again, the applicant stated: that he married P-E- for the permanent resident papers and because he liked her when he met her, so he married her for both reasons; and that he did not have an explanation for why they had never lived together but that he honestly loved her. The applicant also answered "no" when asked if he had married solely to circumvent immigration laws. The record also includes the applicant's wife's statement and the denial of the applicant's January 15, 2007 Form I-485 because the applicant's spouse withdrew the Form I-130 filed on the applicant's behalf.

The AAO determines that the applicant's statements in the interview fail to show that he entered into the marriage in good faith. The applicant admits that he married his spouse to obtain his immigration papers. The AAO acknowledges that the applicant stated that he did not marry his spouse to circumvent immigration law but the applicant's admission that the couple never lived together along with his indication that he married his spouse for both his immigration papers and because he liked her, detracts from the truthfulness of his statement that he did not marry his spouse to circumvent immigration law. The AAO finds, despite the applicant's statement to the contrary, that the evidence in the record shows that his marriage to P-E- was for the purpose of circumventing immigration law. The misrepresentation of the *bona fides* of his marriage is a bar to approval of the subsequently filed Form I-485 that is the subject of this certification based on Section 204(c) of the Act.

The AAO has reviewed the entire record and withdraws the field office director's exercise of discretion in denying the application. However, the application is not approvable. The AAO finds that the applicant entered into a sham marriage to gain immigration benefits and that the applicant has not provided any probative testimony or evidence contradicting this finding. The applicant is inadmissible based on section 212(a)(6)(C)(i) of the Act and although this inadmissibility ground may be waived, a waiver would serve no purpose in this matter as the applicant is subject to section 204(c) of the Act.

On remand, the field office director should once again independently review the record in this matter and make a determination on the issue of whether the applicant's marriage to P-E- was entered into for the purpose of evading the immigration laws. If the field office director finds that the applicant

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<sup>2</sup> Initials used to protect the individual's identity.

misrepresented his good faith marriage and thus is subject to the bar in section 204(c) the field office director must deny the application.

**ORDER:** The director's April 7, 2009 decision is withdrawn. The matter is remanded to the field office director for issuance of a new decision based on the statutory requirements contained in the law.