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

(b)(6)

U.S. Citizenship and Immigration Services

Date: NOV 29 2013 Office: DETROIT FILE:

IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 application for permission to reapply for admission after removal was denied by the Field Office Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action consistent with this decision.

The record indicates that the applicant is a native and citizen of Lebanon who was ordered excluded then removed from the United States on July 21, 2008. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen daughter. She seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with her U.S. citizen children.

The Field Office Director determined that the applicant also was inadmissible under section 212(a)(6)(C)(i) of the Act for providing U.S. Citizenship and Immigration Services (USCIS) with fraudulent and misleading information in connection with an application for immigration benefits based upon her marriage to a U.S. citizen. The Field Office Director stated that the applicant's second marriage was fraudulent. As this inadmissibility would require approval of a Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), the Field Office Director determined that no purpose would be served in granting the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and denied the application accordingly. *See Decision of the Field Office Director,* November 28, 2011.

On appeal, filed on December 10, 2011, and received by the AAO on August 22, 2013, the applicant states that her marriage to her second husband, a U.S. citizen, was not a sham and that he abused her. To support her assertion, the applicant submits copies of an arrest record for her former husband for domestic violence and a protection order against him. After his arrest and the issuance of the protective order, the applicant's former husband withdrew his Form I-130 petition filed on behalf of the applicant and accused her of marrying him solely to obtain immigration benefits.

The record includes but is not limited to the following documentation: affidavits submitted by the applicant's two U.S. citizen children; a copy of the arrest record for domestic violence for the applicant's second husband; a copy of the protection order issued against the applicant's second husband; letters of reference; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

The record indicates that the applicant entered the United States on May 2, 1989 as a non-immigrant, with her first husband and their two children. The applicant was included as a derivative on her former husband's asylum application, and while it was pending, the applicant was granted advance parole to visit her sick mother in Lebanon. She returned to the United States on June 22, 1993. On July 30, 1996, the Los Angeles Asylum Office referred the asylum application of the applicant's first husband to an immigration judge. The immigration judge denied the applicant's first husband asylum but conditionally granted him suspension of deportation on January 30, 1998. The record indicates that the applicant's first husband appealed this decision, in part because the applicant and

their children had been placed in exclusion proceedings instead of deportation proceedings with him. Because the applicant was in exclusion proceedings after her re-entry into the United States under advance parole authorization, she was ineligible for a grant of suspension of deportation. The appeal subsequently was withdrawn.

The applicant's first husband filed a Form I-130 petition on her behalf on September 16, 2002. The applicant divorced him in 2003. The Form I-130 filed by the applicant's first husband was denied on October 22, 2008.

The applicant married her second husband, a U.S. citizen, on March 17, 2004. The applicant's second husband filed a Form I-130 petition on her behalf on June 8, 2004. The applicant filed Form I-485, Application to Register Permanent Resident or Adjust Status, on the same date.

The record includes copies of police reports indicating that on January 22, 2005, police were called to the applicant's home in response to a report of family trouble and assault. The applicant's second husband was arrested and charged with domestic violence. The record also includes a copy of a protective order, dated February 1, 2005, issued for the applicant against her second spouse.

Between February 7 and March 30, 2005, the applicant's second husband sent four letters to USCIS requesting that the Form I-130 that he filed on behalf of the applicant be withdrawn. The letters accused the applicant of marriage fraud, stating that she only entered the marriage to obtain immigration benefits.

On March 9, 2005, the applicant's second husband filed for divorce with the Circuit Court of Michigan, alleging that the applicant entered into their marriage solely to adjust her immigration status. On June 29, 2005, the Circuit Court issued a default judgment of divorce, as the applicant failed to appear for a settlement conference.

On March 26, 2005, USCIS granted the applicant's second husband's request to withdraw the Form I-130 and informed the applicant that her application for status as a permanent resident was denied, as the visa petition filed on her behalf had been withdrawn. After being placed under an order of supervision, the applicant was removed from the United States on July 21, 2008.

The Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act because she knowingly provided USCIS with "fraudulent and misleading information in connection with an application for immigration benefits" based upon her marriage to a U.S. citizen. However, the evidence the applicant submits on appeal calls into question the factual issue of whether the applicant committed marriage fraud. It appears that the evidence of spousal abuse by the applicant's second husband was not available to the Field Office Director at the time of his decision. The Field Office Director was aware that the applicant's second husband filed a petition for divorce with the Circuit Court and his petition included an allegation that the applicant married him solely for immigration benefits. While the circuit court stated it was satisfied that the material factual allegations in the complaint are true, it made no affirmative finding that the marriage was fraudulent. Additionally, the record indicates that the Form I-130 filed by the applicant's second husband was not denied on the basis of marriage fraud, but rather it was withdrawn at his request.

On appeal the applicant asserts that she is not inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation of a material fact and provides additional evidence to support her assertion. The matter therefore is remanded to the Field Office Director to determine the applicability of section 212(a)(6)(C)(i) in light of this new evidence. If the Field Office Director finds the applicant remains inadmissible for misrepresentation, the applicant would require approval of a Form I-601, and no purpose would be served in granting the applicant's Form I-212.

Moreover, the Field Office Director's decision also reflects a conclusion that the applicant was involved in a sham marriage to obtain immigration benefits. 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).

The Field Office Director indicated that the applicant's marriage to her second husband was entered into for the purpose of evading the immigration laws of the United States. If this determination stands after reviewing the applicant's evidence on remand, section 204(c) of the Act also would apply to the applicant. If the applicant's prior marriage is determined to have been entered into for the purpose of evading the immigration laws of the United States, she is ineligible as a beneficiary of a petition for an immigrant visa to enter the United States and no purpose would be served in addressing her application for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

The matter is remanded to the Field Office Director to determine whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for providing USCIS with fraudulent information in connection with an application for immigration benefits based on her marriage to a U.S. citizen, and, if the applicant is found to have committed marriage fraud, whether the Form I-130 filed by the applicant's daughter should be revoked. If the Field Office Director finds, given the new evidence from the applicant, that she is not inadmissible under section 212(a)(6)(C)(i) of the Act and has not committed marriage fraud, the applicant's Form I-212 application may be reviewed on its merits.

ORDER: The matter is remanded to the Field Office Director for further action as described above.