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

U.S. Citizenship and Immigration Services

(b)(6)

Date: JUN 2 1 2013 Office: BANGKOK FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Hong Kong who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen. On December 6, 2011, he filed an Application for Waiver of Ground of Inadmissibility (Form I-601). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse and children.

In a decision dated June 29, 2012, the field office director denied the Form I-601 application for a waiver in the exercise of discretion, finding that the record contained substantial and probative evidence that the applicant previously sought to be accorded immediate relative status as the spouse of a U.S. citizen based on a marriage entered into for the primary purpose of obtaining an immigration benefit.

On appeal, the applicant submitted a statement indicating that his August 1, 1989 marriage to was not entered for the purpose of obtaining an immigration benefit; that the affidavit she sent Legacy INS was written out of frustration; and requested that the waiver application be approved in the interest of family reunification.

The record includes, but is not limited to: the applicant's statements on appeal; declarations by the applicant's current U.S. citizen spouse; character reference letters; documentation concerning the applicant's removal proceeding; birth certificates; character reference letters and other documentary evidence of rehabilitation; marriage certificates; a Notice of Intent to Revoke a visa petition; a September 21, 2011 notice of decision revoking the applicant's visa petition; and documentation concerning the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

The record shows that on December 5, 2005, the applicant's current spouse, Michelle Fung Lam, filed an alien relative petition on behalf of the applicant. The petition was granted in error by the California Service Center. On June 23, 2011, the Field Office Director of the Honolulu Field Office (Honolulu FOD) issued a Notice of Intent to Revoke (NOIR) the visa petition. The basis for the intended revocation was the conclusion by the Honolulu FOD that the applicant had sought to be accorded an immediate relative status as the spouse of a U.S. citizen by entering into a marriage for the purpose of evading the immigration laws. *See* section 204(c) of the Act, 8 U.S.C. § 1154(c). The Honolulu FOD did not question the bona fides of the applicant's current marriage to

. Rather, the Honolulu FOD's conclusion was based on the beneficiary's August 1, 1989 marriage to who submitted an affidavit to Legacy INS stating that she left the applicant in December 1989 because he told her that he had married her to become a citizen. As the Honolulu FOD determined that the evidence submitted by the applicant and his spouse in response to the NOID was insufficient to overcome the section 204(c) statutory bar, the visa petition was revoked on September 21, 2011. The applicant and his current U.S. citizen spouse filed a timely appeal of the Honolulu FOD's decision to the Board of Immigration Appeals (Board).

In a decision dated February 15, 2013, the Board dismissed the appeal after finding that the record evidence contained substantial and probative evidence that, through his marriage to the applicant sought to be accorded immediate relative status as the spouse of a U.S. citizen based on a marriage entered into for the primary purpose of obtaining an immigration benefit. The Board found that the affidavit of along with the applicant's "pattern of entering into short-lived marriages with United States citizens soon after meeting them," constitutes substantial evidence that the applicant entered into a marriage with for the purpose of evading the immigration laws.

Section 204(c) of the Act provides that:

> Notwithstanding the provisions of subsection (b) no petition shall be approved if:
>
> (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the [Director] to have been entered into for the purpose of evading the immigration laws; or
> (2) the [Director] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation 8 C.F.R. § 204.2(a)(1)(ii) states in pertinent part:

> 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.

The AAO notes that, as the applicant is subject to section 204(c) of the Act, the Honolulu FOD revoked the Form I-130 immediate relative petition that had been approved on behalf of the applicant. In a decision dated February 15, 2013, the Board found that the Honolulu FOD properly

revoked the visa petition filed on the applicant's behalf by his current spouse and dismissed their appeal. The viability of the applicant's Form I-601 waiver application is dependent on an application for immigrant visa that is, in turn, based on an approved Form I-130, Petition for Alien Relative. In the absence of an underlying approved Form I-130 immediate relative petition, the Form I-601 waiver application would be moot. As the Honolulu FOD has revoked the Form I-130 filed by the applicant's current U.S. citizen spouse on his behalf, no purpose would be served in adjudicating the Form I-601 waiver application at this time.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving statutory eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.