



U.S. Department of Justice

Immigration and Naturalization Service

441

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

FILE: [Redacted] Office: SAN FRANCISCO, CA

Date: FEB 12 2001

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT:

[Redacted]

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prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be granted, the order dismissing the appeal will be withdrawn and the application will be approved.

The applicant is a native and citizen of the Philippines who was admitted to the United States as a nonimmigrant visitor in April 1993 by presenting a fraudulent Philippine passport. The applicant submitted a request for asylum in May 1993, which contained false information. She was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having obtained admission to the United States by fraud or misrepresentation. The applicant married a naturalized United States citizen in August 1996, and is the beneficiary of an approved immediate relative visa petition. She seeks the above waiver in order to remain in the United States and reside with her spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, counsel submits new evidence that the applicant and her spouse have a child who was born in the United States in November 1998 with severe respiratory problems. A medical evaluation of the child indicates that the child's life would be at risk if he were to travel to the Philippines with his mother due to the likelihood of aggravating respiratory infections. Counsel asserts that the difficulty which the applicant's spouse would experience as a single father caring for an infant with special medical needs, is an extreme hardship over and above the economic and social disruptions involved in the removal of a family member.

The record clearly reflects that the applicant obtained a Philippine passport under an assumed name, used that document to obtain a nonimmigrant visa from a consular officer, and then obtain admission to the United States in April 1993. She then obtained a social security card and a California driver's license and commenced unauthorized employment in September 1993.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

(C) MISREPRESENTATION.-

(i) 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 Act is inadmissible.

Section 212(i) ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez-Moralez, 21 I&N Dec. 296 (BIA 1996).

The Board has held that extreme hardship is not a definable term of fixed and inflexible meaning, and that the elements to establish extreme hardship are dependent upon the facts and circumstances of each case. These factors should be viewed in light of the Board's statement that a restrictive view of extreme hardship is not mandated either by the Supreme Court or by its own case law. See Matter of L-O-G-, 21 I&N Dec. 413 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board recently stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under § 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; (4) the financial impact of departure from this country; (5) and finally, significant

conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record contains an affidavit from the applicant in which she discusses the events leading to her being found inadmissible. The record also contains evidence that the applicant's spouse and child cannot join her in the Philippines due to the child's medical condition. The medical report provided indicates that the child is a "high risk baby", who has twice been hospitalized for pneumonia and respiratory infections. For the child to travel to the Philippines, where required forms of treatment are not likely to be available, would place the child's life at risk. Rather than jeopardizing the life of his child, the applicant's spouse would remain in the United States to care for his child and provide him with the special medical care he requires. The denial of the waiver in this case, would result in the permanent separation of the applicant and her spouse and son.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as she may by regulations prescribe.

The unfavorable factors in this matter, all occurring in 1993, include the applicant's obtaining admission into the United States by fraud or willful misrepresentation, obtaining unauthorized employment and submitting an application for asylum containing false information.

The favorable factors include the applicant's marriage to a United States citizen in 1996, the absence of a criminal record either before or after entry into the United States, and the extreme hardship that would be imposed upon a qualifying relative if her application for waiver is denied.

Although the applicant's actions in this matter cannot be condoned, the favorable factors in this matter are deemed to outweigh the unfavorable ones. In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has now met that burden. Accordingly, the motion will be granted, the order dismissing the appeal will be withdrawn and the application will be approved.

ORDER: The order of May 14, 1999 dismissing the appeal is withdrawn. The motion is granted and the application is approved.