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U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

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

[Redacted]

FILE: [Redacted]

Office: San Francisco

Date: **NOV 15 2002**

IN RE: Applicant:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212 of the Immigration and Nationality Act, 8 U.S.C. § 1182

IN BEHALF OF APPLICANT:

[Redacted]

**PUBLIC COPY**

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in March 1976 and May 1994. The applicant married a native of the Philippines and naturalized U.S. citizen in August 1998, and she is the beneficiary of a Petition for Alien Relative which remains unadjudicated in the record. A previous waiver was denied for failure to have a qualifying relative. An appeal of that decision was dismissed on June 12, 1998. The applicant seeks the above waiver in order to remain in the United States and reside with her spouse.

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

On appeal, the applicant states that she does not agree with the decision because the Service failed to consider her equities and the extreme hardship her husband (hereafter referred to as [REDACTED]) would suffer.

On appeal, counsel discusses the hardship [REDACTED] and her children from a former relationship would suffer. Counsel states that the applicant and [REDACTED] are responsible for caring for each other in their golden years. Counsel discusses the hardship of the applicant having to return to the Philippines, her financial contributions to the family, the possibility of [REDACTED] losing the home they rent from a friend, and his becoming homeless. Counsel submits medical evidence that [REDACTED] suffers from chronic bronchial asthma, obstructive pulmonary disease and low back pain. Despite these illnesses, [REDACTED] indicates on his Affidavit of Support dated September 7, 2000, that he is employed at the Manila Bay Restaurant. The record fails to mention any assistance that one or more of [REDACTED] seven children from his former marriage might be able to provide.

The record reflects that the applicant obtained a U.S. passport in the name of [REDACTED] in 1976 and used that document in March 1976 to procure admission into the United States. She remained in the U.S. until October 1977 when she returned to the Philippines to attend her father's funeral. In December 1977, she attempted to use the same fraudulent document to procure admission into the United States in Honolulu. She was placed in exclusion proceedings, paroled into carrier custody and absconded. In January 1979, she was arrested in Los Angeles. On January 9, 1979, she was ordered excluded and deported by an immigration judge, and was deported to the Philippines on January 11, 1979. On May 29, 1994, the applicant applied for and was issued a nonimmigrant visa by a

consular officer, using a false passport in the assumed name of [REDACTED]. She again procured admission as a nonimmigrant visitor by fraud or willful misrepresentation by presenting that fraudulent Filipino passport. The applicant has remained in the United States ever since.

Section 212(a)(6)(C) of the Act provides, in part, that:

(i) 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.

(ii) Any alien who falsely represents, or has falsely represented himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

Section 212(i) of the Act provides that:

(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).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed fraud or misrepresentation. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See Fiallo v. Bell, 430 U.S. 787 (1977); Reno v. Flores, 507 U.S. 292 (1993); Kleindienst v. Mandel, 408 U.S. 753, 766 (1972). See also Matter of Yeung, 21 I&N Dec. 610, 612 (BIA 1997).

In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, P.L. No. 99-639, and redesignated as section 212(a)(6)(C) of

the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). In the Act of 1990, which became effective on June 1, 1991, Congress imposed a statutory bar on those who made oral or written misrepresentations in seeking admission into the United States and on those who made material misrepresentations in seeking admission into the United States or in seeking " other benefits" provided under the Act. Congress made the amended statute applicable to the receipt of visas to, and admission of, aliens who committed acts of fraud or misrepresentation, whether those acts occurred before, on, or after the date of enactment.

In 1990, section 274C of the Act, 8 U.S.C. § 1324c, was inserted by the Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990, 104 Stat. 5059), effective for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) provided penalties for document fraud stating that "it is unlawful for any person or entity knowingly "(2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act,..."

The applicant knowingly obtained a Philippine passport in an assumed name and used that document to apply for and to obtain a nonimmigrant visa and to procure admission into the United States by fraud in May 1994, a felony.

Congress has increased the penalties on fraud and willful misrepresentation, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar and eliminating children as a consideration in determining the presence of extreme hardship. Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 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 section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; 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; the financial impact of departure from this country; 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 BIA noted in Cervantes-Gonzalez that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor goes to the wife's expectations at the time they were wed. The alien's wife was aware that she may have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The alien's wife was also aware that a move to Mexico would separate her from her family in the United States. The BIA found this to undermine the alien's argument that his wife will suffer extreme hardship if he is deported. The BIA then refers to Perez v. INS, 96 F.3d 390 (9th Cir. 1996), where the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The applicant in the present matter had been unlawfully present in the United States since 1994 and it must be presumed that her husband was aware of that when they married in August 1998.

Although the applicant alleges financial hardship in this matter, the BIA referred to Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994), in which the court stated that the "extreme hardship requirement of section 212(h)(2) of the Act was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy."

In Matter of Cervantes-Gonzalez, the Board also held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a section 212(i) waiver application in the exercise of discretion. Matter of Tijam, 22 I&N 408 (BIA 1998), followed. The Board declined to follow the policy set forth by the Commissioner in Matter of Alonso, 17 I&N Dec. 292 (Comm. 1979); Matter of Da Silva, 17 I&N Dec. 288 (Comm. 1979), and noted that the United States Supreme Court ruled in INS v. Yueh-Shaio Yang, 519 U.S. 26 (1996), that the Attorney General has the authority to consider any and all negative factors, including the respondent's initial fraud.

The court held in INS v. Jong Ha Wang, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

It is noted that the Ninth Circuit Court of Appeals in Carnalla-Muñoz v. INS, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in Matter of Tijam, supra, need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter last entered the United States in 1994 by fraud and married [REDACTED] in 1998. She now seeks relief based on that after-acquired equity. However, as previously noted,

a consideration of the Attorney General's discretion is applicable only after extreme hardship has been established.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The district director noted that Diosdado's history of full-time employment over the past 10 years discredits the claim that he cannot take care of himself. This conclusion, and the fact that Diosdado has seven adult children who might be able to help him, has not been overcome on appeal.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.