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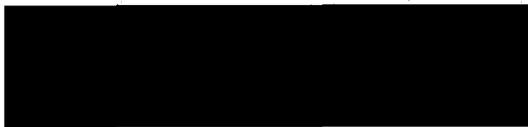
U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: 

Office: Los Angeles

Date:

JAN 29 2003

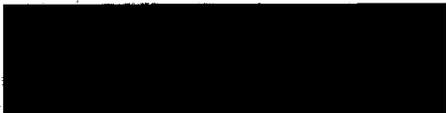
IN RE: Applicant:



APPLICATION:

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

IN BEHALF OF APPLICANT:



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, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

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 in August 1997. The applicant married a United States citizen in December 1999 and is the beneficiary of an approved petition for alien relative. The applicant seeks the above waiver in order to remain in the United States and reside with her spouse (hereafter referred to as Mr. [REDACTED]).

The district director noted that Mr. [REDACTED] suffers from birth defects and is able to support himself as a paramedic and pharmacy technician. On appeal, the Associate Commissioner reviewed the new evidence and determined that extreme hardship would be imposed on a qualifying relative, but denied the application as a matter of discretion.

The record reflects that the applicant was admitted to the United States on August 2, 1997, as a nonimmigrant visitor using the passport and nonimmigrant visa of another person. Such an act constitutes a felony under section 274C of the Act, 8 U.S.C. § 1324c.

On motion, counsel refers to Matter of Tijam, 22 I&N Dec. 408 (BIA 1998) and states that the applicant committed a single isolated act of misrepresentation, she has presented evidence of her good behavior, and she has family ties in her mother-in-law and sister-in-law.

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. The alien in Tijam committed the fraudulent act in 1987, prior to IIRIRA. The alien in the present matter committed the fraudulent act in 1997, subsequent to IIRIRA.

Matter of Tijam, refers to an alien in deportation proceedings who is applying for a waiver under former section 241(a)(1)(H) of the Act, 8 U.S.C. § 1251(a)(1)(H) (1994). The present applicant is applying for a waiver of grounds of inadmissibility under section 212(i) of the Act, and not for a waiver of grounds of removal under present section 237(a)(1)(H) of the Act, 8 U.S.C. § 1227(a)(1)(H).

Section 212(a)(6)(C) of the Act provides, in pertinent 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, in pertinent part, 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).

When an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. 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).

Congress has expanded the penalties recently to those who engage in document fraud for the purpose of obtaining a benefit under the Act. Congress also restricted section 212(i) of the Act in a number of ways with the IIRIRA amendments. First, immigrants who are parents of U.S. citizen or lawful permanent resident children can no longer apply for this waiver. Second, the immigrant must now show that refusing him or her admission would cause extreme hardship to the qualifying relative. Third, Congress eliminated the alternative 10-year provision for immigrants who failed to have qualifying relatives. Fourth, Congress eliminated judicial review of section 212(i) waiver decisions, and Fifth, a child is no longer a qualifying relative.

After reviewing the amendments to the Act and to other statutes regarding fraud and misrepresentation from 1957 to the present

time, and after noting the increased penalties Congress has placed on such activities, 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, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

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 he may by regulations prescribe.

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 entered the United States in August 1997 by fraud, divorced her Philippine husband in July 1999 and married Mr. Greenlee in December 1999. She now seeks relief based on that after-acquired equity.

The issue of extreme hardship to the applicant's spouse was addressed and acknowledged in the initial appeal. Hardship to the applicant's mother-in-law and sister-in-law is not a consideration in this matter.

The favorable factors include the applicant's family tie (Mr. Greenlee), the absence of a criminal record, and extreme hardship to the qualifying relative.

The unfavorable factors include the applicant's procuring admission into the United States by fraud, which is an act classified as a felony, the applicant's employment without Service authorization, and her lengthy stay in the United States without Service authorization. These are the same factors discussed by the Associate Commissioner in dismissing the initial appeal. Nothing further has been submitted on motion.

The applicant's actions in this matter cannot be condoned. Her equity (marriage) gained after procuring admission into the United States by fraud can be given only minimal weight. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that the favorable exercise of the Attorney General's discretion is warranted. Accordingly, the motion will be dismissed, and the order dismissing the appeal will be affirmed.



**ORDER:** The motion is dismissed. The order of July 3, 2002, dismissing the appeal, is affirmed.

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