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U.S. Department of Justice

Immigration and Naturalization Service

**Ha**

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

[REDACTED]

File: [REDACTED] Office: SAN FRANCISCO, CA

Date: JAN 31 2003

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

**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. The applicant is the unmarried son of lawful permanent resident parents and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and adjust his status to that of a lawful permanent resident.

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, counsel asserts that the decision to deny the applicant's waiver request was arbitrary and capricious, an abuse of discretion, and a violation of the applicant's due process rights. Counsel also asserts that the district director failed to weigh the substantial favorable factors against the minor allegation of fraud and failed to properly consider the extreme hardship that would be suffered by the applicant's qualifying relatives.

The record reflects that on October 18, 1995, the applicant submitted an application for adjustment of status and concurrent petition for alien relative seeking to classify him as the spouse of a United States citizen. The application and petition were denied on December 12, 1995, based on a finding that the supporting marriage certificate was a counterfeit document.

Section 212(a) of the Act states:

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) of the Act states:

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).

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. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999).

If 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. Matter of George and Lopez-Alvarez, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

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.

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, *supra*, 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.

In support of the initial waiver request, the applicant submitted a declaration from his mother stating that the applicant contributes financially to her monthly mortgage payments, looks after her welfare, and takes her to doctor's appointments and other social engagements. She also stated that the applicant's removal would cause serious disruption to her family unit and that she would find it impossible to relocate to the Philippines because of the unstable economic and political climate in that country.

On appeal, counsel submits documentation including a brief; evidence that the applicant's parents and a sister are lawful permanent residents of the United States and that his brother is a naturalized United States citizen; evidence that the applicant's parents have a mortgage on their home; evidence that the applicant is employed, has received job-related training and certificates of achievement, and filed an income tax return in 2000; medical information concerning the applicant's mother; an affidavit from the applicant's mother dated April 20, 2001 and one from his father dated April 1, 2001; and a psychological report on the applicant's family from a licensed clinical and forensic psychologist. Much of the documentation provided by counsel on appeal was previously submitted with the initial waiver request.

On appeal, counsel states that the applicant's parents are lawful permanent residents and that the applicant's fiancée is now pregnant with the applicant's child. Counsel further states that the applicant is a person of good moral character, a model

resident, a valuable member of the community, has never been arrested, and has never been convicted of a crime.

Counsel asserts that the applicant's parents have substantial family ties to the United States, have no such ties remaining in the Philippines, and own property and are gainfully employed in this country. Counsel asserts that it would be impossible for the applicant's parents to relocate to the Philippines due to conditions and lack of medical care in that country and the financial impact and emotional distress such a relocation would impose on them. Counsel also asserts that if the applicant were removed and his parents remained in the United States separated from him, they would suffer serious and extreme emotional hardship.

The applicant's mother states that she is sixty years-old, grew up with weak lungs, suffers from osteoporosis and chronic abdominal pain, and has had a hysterectomy and a gall bladder operation. She states that her medical needs are provided by her health care plans, insurance coverage, and other benefits in the United States and that she cannot relocate to the Philippines because medical care there would be too expensive. She states that the applicant's removal would seriously disrupt her family unit and that she would be helpless without him.

The applicant's father states that he is sixty-two years old and cannot start over again. He states that he cannot move to the Philippines because he does not have the physical capacity or mental strength to work anew and build a new business. He also states that at his age his health is fast deteriorating and his health care plans, insurance coverage and other benefits could not be maintained in the Philippines. In addition he states that his family cannot dislodge themselves and move back to the Philippines.

The psychological report contained in the record indicates that the family was evaluated on counsel's referral on March 31, 2002. The report indicates that the family is loyal, dedicated, and close, and that its members are going through a great deal of stress, depression, anxiety, fear and somatic symptoms for a variety of reasons, including health and job-related issues and the possibility of the applicant's removal from the United States.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), 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. See Hassan v. INS, 927 F.2d 465. (9th Cir. 1991).

There are no laws that require the applicant's parents to leave the United States and relocate to the Philippines. Further, 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 removed. See Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994).

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

A review of the factors presented, and the aggregate effect of those factors, fails to establish that the applicant's parents would suffer extreme hardship over and above the normal disruptions involved in separation from a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing the favorable or unfavorable exercise of the Attorney General's 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. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.