

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

Handwritten signature/initials

[Redacted]

FILE:

[Redacted]

Office: SAN FRANCISCO, CALIFORNIA

Date:

JUN 7 2004

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).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The Acting District Director's decision will be withdrawn and the appeal sustained.

The record reflects that the applicant is a native and citizen of the Philippines. She was found to be inadmissible to the United States pursuant to 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 immigration benefits by fraud and willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her U.S. citizen daughter. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with her U.S. citizen daughter and father.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Acting District Director Decision* dated May 20, 2003.

The record reflects that on December 22, 1986, the applicant was admitted into the United States as a nonimmigrant visitor for pleasure. The applicant remained in the United States beyond her authorized stay and in 1988 she filed an application with the Immigration and Naturalization Service (now known as Citizenship and Immigration Services (CIS)), as a Special Agricultural Worker. On March 12, 2002, the applicant was requested to submit a complete statement regarding her agricultural worker application. In her affidavit the applicant admitted that her application for legalization as a Special Agricultural Worker and her application for employment authorization were based on fraudulent information.

Based on this affidavit the Acting District Director found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and advised the applicant to file an Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act.

On appeal, counsel asserts that CIS is precluded from considering information contained in a legalization file to deny a waiver and failed to correctly assess extreme hardship to the applicant's U.S. citizen father. Additionally on appeal counsel requests 60 days in order to submit a brief. As of this date, nearly ten months later, no additional statements or evidence have been submitted.

The AAO agrees with counsel and finds that the Acting District Director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act based on information provided from the applicant's special agricultural worker application.

Section 210(b)(6) of the Act, 8 U.S.C. § 1160(b)(6) – Special agricultural workers, provides in pertinent part, that:

6) Confidentiality of information

(A) In general

Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may -

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, including a determination under subsection (a)(3)(B) of this section, or for enforcement of paragraph (7);

(ii) make any publication whereby the information furnished by any particular individual can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

....

7) Penalties for false statements in applications

(A) Criminal penalty - Whoever -

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

(ii) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(B) Exclusion

An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 1182(a)(6)(C)(i) of this title.

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation on any other application except on her application for special agricultural worker status. The applicant has not been convicted for false statements in that or any other application. The AAO thus finds that the acting district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The acting district director's decision is withdrawn and the appeal is sustained.