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JAN 31 2005

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CALIFORNIA

Date:

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 Interim District Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal is sustained, the interim district director's decision will be withdrawn and the matter remanded for further consideration and action.

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 sought to procure an immigrant visa by knowingly and willfully misrepresenting a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her U.S. citizen son. She now seeks a waiver of inadmissibility in order to remain in the United States to reside with her children.

The interim district director concluded that the applicant had failed to establish that she has a qualifying family member in order to be eligible to file a waiver application under section 212(i) of the Act. The application was denied accordingly. See Interim District Director's *Decision* dated May 19, 2003.

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.

Section 212(i) of the Act provides that:

(1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], 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 [Secretary] 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.

The record reflects that on October 22, 1992, the applicant was convicted of one count of Conspiracy to File False Statements to the INS, in violation of Title 18 U.S.C. 371 and four counts of Fraud and Misuse of Entry Visas, Aiding and Abetting in violation of Title 18 U.S.C. 1546, 2(a). On December 18, 1992, the applicant was sentenced to thirty-one months imprisonment for each count to run concurrently and to three years of supervised release.

On appeal, counsel submits a brief and asserts that the applicant is not inadmissible under section 212(a)(6)(C) of the Act because she did not procure or seek to procure a visa, document or admission into the United States for personal use and therefore the interim district director erred in adjudicating the waiver application under section 212(i) of the Act. Counsel does not dispute the fact that the applicant was convicted of Conspiracy to File False Statements to the INS and four counts of Fraud and Misuse of Entry Visas, Aiding an Abetting. Counsel states that the applicant filed the waiver applicant under section 212(h) of the Act and therefore has the required family ties in order for the waiver to be adjudicated. In addition counsel states that

the applicant recently married a U.S. citizen who will suffer extreme hardship if her waiver application was denied.¹

The AAO finds that the interim district director erred in finding the applicant inadmissible under section 212(a)(6)(C) of the Act. The applicant did not willfully misrepresent a material fact in order to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. While she aided others in procuring benefits under the Act, her motivation appears to have been monetary.

The applicant was convicted of conspiracy to file false statements to the INS and fraud and misuse of entry visas, aiding and abetting and was sentenced to two concurrent sentences of 31 months, a total of 62 months. She is therefore inadmissible under sections 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude and 212(a)(2)(B) of the Act for having been convicted of two or more offenses for which the aggregate sentences to confinement were 5 years or more.

Section 212(a) of the Act states in pertinent part:

2)Criminal and related grounds.-

(A) Conviction of certain crimes.-

(i) In general.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense or an attempt or conspiracy to commit such a crime.

....

(B) Multiple criminal convictions.-Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

An application for a waiver these of grounds of excludability is adjudicated pursuant to section 212(h) of the Act which provides, in pertinent part, that:

The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

¹ The AAO notes that counsel did not provide a marriage certificate as evidence of the applicant's marriage to a U.S. citizen.

(1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

In the present case, the applicant has shown that she is the parent of U.S. citizen children and claims to be the spouse of a U.S. citizen. She, therefore has the requisite relationships to file the waiver application under section 212(h) of the Act.

In view of the foregoing, the previous decision of the interim district director will be withdrawn. The application is remanded to the interim district director for consideration of the issues stated above and entry of a new decision, which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The appeal is sustained and the interim district director's decision is withdrawn. The matter is remanded for further action consistent with the foregoing discussion.