



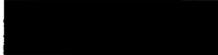
U.S. Citizenship
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FILE: 

Office: RENO, NV

Date: JUL 07 2005

IN RE: 

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:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Reno, NV, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Philippines who 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). The applicant is the spouse of a U.S. Citizen and is eligible to file a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse who petitioned for her in this case.

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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of District Director*, dated May 23, 2003.

On appeal, counsel asserts that the decision of the district director is based on a misinterpretation of the facts and that the applicant did not violate section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). *Brief in Support of Appeal*, undated. Counsel's brief, therefore, does not address the need for a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In support of these assertions, counsel submits an undated brief, attached to Form I-290B that is dated June 13, 2003. The record also contains eleven affidavits detailing the applicant's whereabouts during her stay in the United States. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant entered the United States on September 20, 2002 as a B-2 Visitor and was given permission to lawfully stay in the United States until March 19, 2003. *See Form I-94*. The applicant's stated purpose for entering the United States was to visit her parents and sister in San Jose, CA for one month and 15 days. *Form DS-156*. The record also reflects that the applicant intended to visit her aunt. *Attachment to Form I-72*, dated April 2, 2003. The applicant visited her parents, siblings, relatives and friends in California from September 20, 2002 until October 25, 2002. *Supporting Affidavits*, various dates. The applicant then moved to Reno, NV where she lived with a family friend. She met her current husband on October 25, 2003 in Reno, NV although the record reflects that they had been corresponding with each other through pen pal letters before she entered the United States. *Brief in Support of Appeal*, at 2. The record does not include these letters. On January 14, 2003, the applicant divorced her previous husband who was living in the Philippines and subsequently married her current husband on January 28, 2003. Therefore, the district director asserted that the applicant obtained a B1/B2 visa for the sole purpose of immigrating to the United States. *Attachment to Form I-72*, at 1.

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.

Counsel does not address the issue of extreme hardship and qualification for a waiver under section 212(i) of the Act, but contends that section 212(a)(6)(C) of the Act is not applicable to the applicant. *Brief in Support of Appeal*. at 2.

The Department of State Foreign Affairs Manual states that, "in determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: Apply for adjustment of status to permanent resident..." *DOS Foreign Affairs Manual*, § 40.63 N4.7(a)(1).

The Department of State developed the 30/60-day rule which applies when, "an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ...Marrying and takes [sic] up permanent residence." *Id.* at § 40.63 N4.7-1(3).

Under this rule, "when violative conduct occurs more than 60 days after entry into the United States, the Department does not consider such conduct to constitute a basis for an INA 212(a)(6)(C)(i) ineligibility." *Id.* at § 40.63 N4.7-4.

Although the AAO is not bound by the Foreign Affairs Manual, it finds its' analysis in these situations to be persuasive. In the case at hand, the applicant married and applied for permanent residence after entering on a B-2 visa. The marriage and application for permanent residence is violative conduct under the 30/60 day rule. However, the marriage took place on January 28, 2003 and the application for permanent residence took place on February 28, 2003. Both of these events occurred more than 60 days after the applicant's entrance on September 20, 2002. Furthermore, the record reflects that the applicant met with her family members as she stated she would and that she did not reside with her husband until after they were married. Although the record reflects contact between the applicant and her husband before her entrance, there is not sufficient evidence that this contact was to circumvent the immigrant visa process.

The AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and therefore, the Form I-601 is moot. Having found that the applicant is not in need of the waiver, no purpose would be served in discussing whether her husband has established extreme hardship under section 212(i) of the Act. Accordingly, the appeal will be sustained.



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ORDER: The appeal is sustained.