

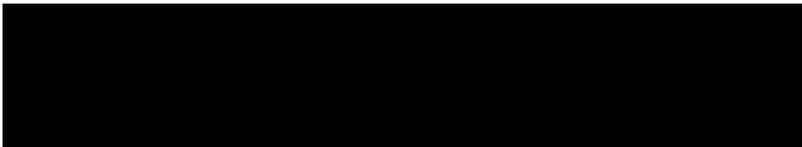
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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: MANILA PHILIPPINES

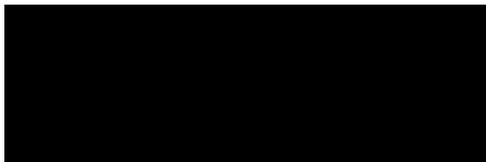
Date: JUN 17 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, and is now before the Administrative Appeals Office (AAO) 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 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 attempted to procure a visa to the United States by fraud or willful misrepresentation. The applicant is the daughter of a U.S. Citizen and seeks 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 mother who petitioned for her in this case. The officer in charge also references section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II) for accruing unlawful presence of one year or more. *Decision of the Officer in Charge*, dated July 7, 2003. As there is no record that the applicant has ever been in the United States, the applicant would not be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The officer in charge 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. *Id.* at 2.

On appeal, counsel asserts that 1) the alleged misrepresentation was not material; 2) the pre-IIRAIRA waiver standard should be applied in this case; 3) under current standards, the extreme hardship requirement is met and 4) the Citizenship and Immigration Service's (CIS) contention that separation from one's family does not establish extreme hardship is contrary to existing case law. *Brief in Support of Appeal*, dated August 15, 2003.

In support of these assertions, counsel submits a brief, dated August 15, 2003. The record also contains evidence from the initial I-601 filing which includes a statement of the applicant's mother; copy of U.S. passport, tax documents and navy letters for applicant's brother; medical records for applicant's mother and the U.S. Department of State Public Announcement on the Philippines dated January 10, 2003. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant provided false information to the United States Government regarding her marital status in an immigrant spouse petition in 1990. As a result of this prior misrepresentation, the applicant is prevented from obtaining an immigrant visa based on her mother's petition.

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 first asserts that the alleged misrepresentation was not material. *Supra.* at 4. The record reflects that the applicant was still married to her first husband when she sought an immigrant visa based on a petition from her second husband. However, she concealed the first marriage by failing to disclose it on the record and this was a material misrepresentation. Counsel cites *Matter of S & BC*, 9 I & N Dec. 436 (Att'y Gen. 1961) which states that a misrepresentation is material if either the alien is inadmissible "on the true facts" or the misrepresentation tends to shut off a line of inquiry which is relevant to alien's eligibility and which might have resulted in a proper determination that the alien be excluded. Therefore, the misrepresentation was material as the applicant was actually found inadmissible "on the true facts". In addition, her misrepresentation of concealing the first marriage would certainly tend to shut off a line of inquiry which would be relevant to her eligibility and which would result in a proper determination that she be excluded.

Counsel also cites part of Article 41 of the Family Code of the Philippines to contend that the applicant was legally single at the time of her first immigrant visa case. *Brief in Support of Appeal.* at 5-6. However, counsel fails to cite the relevant portion of Article 41 of the Philippine Family Code that requires a summary proceeding for the declaration of presumptive death of the absentee for which no evidence was provided. *See Family Code of the Philippines*, Article 41, July 6, 1987.

Lastly, counsel cites *Matter of Gerace*, 12 I & N, Dec. 160 (BIA 1967) to contend that the applicant should have been eligible for an immigrant visa based on her second marriage. *Brief in Support of Appeal.* at 7. *Matter of Gerace* differs from this case in that it was dealing with the dissolution of a prior marriage where no misrepresentation was present. *Id.* In *Matter of Gerace*, the applicant executed an affidavit of her first marriage and did not conceal her first marriage. *Id.* In the case at hand, the applicant misrepresented her marital status by concealing information and is inadmissible based on this fact. She would not be entitled to an immigrant visa under *Matter of Gerace*.

Counsel's second contention is that the pre-IIRAIRA waiver standard should be applied in this case. *Brief in Support of Appeal.* at 9. In support of this position, counsel cites *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271 (June 25, 2001). The *St. Cyr* decision is distinguishable from the case at hand in both the law and the facts. First, the Supreme Court decision specifically addressed the application of section 212(c) of the Act, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The Supreme Court determined that the ultimate repeal of section 212(c) was not retroactive and that section 212(c) relief remains available to those aliens that entered into plea agreements prior to the repeal. The current matter is based on an application for relief under section 212(i) of the Act, which was made more restrictive by IIRIRA. As opposed to section 212(c), the restrictive amendment of section 212(i) has been found to apply retroactively. *Okpa v. INS*, 266 F.3d 313 (4th Cir, 2001). Finally, *INS v. St. Cyr* specifically relates to the settled expectations of individual aliens who enter into plea agreements with the government. *INS v. St. Cyr* at 291. As there is no evidence that

the applicant in the current matter plead guilty as a result of a plea bargain, the reasoning of *St. Cyr* is not applicable to the case at hand.

Counsel's third contention is that the extreme hardship requirement is met. *Brief in Support of Appeal* at 12. A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's mother. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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 significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's mother will suffer extreme hardship because she has been in the United States for more than 21 years; she suffers from bronchitis and hypertension; she has a severe stress disorder; the family unit will be disrupted; she has no significant family ties to the Philippines; she cannot afford to relocate; country conditions are better in the United States and there is a lack of suitable medical care in the Philippines. *Brief in Support of Appeal* at 16-18.

The record includes medical records indicating that the applicant's mother has hypertension, however, there is not a clear connection between the medical problems and the inadmissibility of the applicant. Furthermore, there is insufficient evidence that she cannot receive treatment in the Philippines. The record does not include financial documents that would support the claim of financial hardship. Lastly, the Department of State Public Announcement details terrorist activity in the Philippines against U.S. Citizens, but these reports are of a general nature and insufficient evidence is submitted to show that the applicant's mother would be harmed if she relocated to the Philippines.

Finally, counsel contends the CIS view that separation from one's family does not establish extreme hardship is contrary to existing case law.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch* 21 I & N, Dec. 627 (BIA 1996) held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be

expected upon deportation. *Hassan v. INS, supra*, held further that 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 deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's mother will endure hardship as a result of separation from the applicant and is sympathetic to her situation. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of 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* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.