



U.S. Citizenship
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FILE:

Office: SAN FRANCISCO, CA

Date: OCT 28 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, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decisions of the district director and the AAO will be withdrawn and the application approved.

The applicant is a native and citizen of the Philippines who was 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 admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States 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 spouse.

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 the District Director*, dated August 12, 2002. The decision of the district director was affirmed on appeal by the AAO. *Decision of the AAO*, dated March 12, 2003.

On motion to reopen and reconsider, counsel asserts that the decision of the AAO inappropriately applied precedent decisions, that new facts are present in the case and that extreme hardship is present for the applicant and her spouse. *Applicant's Motion to Reopen and Reconsider*, undated.

In support of these assertions, counsel submits documentation evidencing the purchase of property by the applicant and her spouse and articles and reports addressing country conditions in the Philippines. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant obtained entry into the United States using a fraudulent passport under a false name.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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:

- (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.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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 the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself 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 parents. 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 contends that the applicant's spouse would suffer hardship as a result of relocation to the Philippines in order to reside with the applicant. Counsel indicates that the applicant's spouse is five years from retirement and relocation and dislocation at this point would result in "financial disaster for this family". *Applicant's Motion to Reopen and Reconsider* at 11. Counsel states that the applicant and her spouse have purchased a home together and that the applicant's spouse requires the earnings of the applicant in order to afford their mortgage payments. *Id.* at 4. Counsel asserts that the applicant's spouse would not feel safe living outside of the United States in light of the war in Iraq and the political turmoil and upheaval that characterize life in the Philippines. *Id.* at 4-5. *See also U.S. Department of State Public Announcement*, dated March 19, 2003 and submitted newspaper articles.

Counsel establishes that the applicant's spouse would suffer extreme hardship if he relocates to the Philippines in order to reside with the applicant or remains in the United States in the absence of the applicant. Counsel previously submitted a letter from a physician who has treated the applicant's spouse since 1988. *Letter from Kent L. Sack, MD*, dated January 10, 2001. The letter from the physician indicates that the

applicant's spouse suffers from chronic hypertension, chronic obesity and anxiety. *Id.* The letter explains that the anxiety and low self-esteem experienced by the applicant's spouse have "markedly leveled" as a result of his marriage. *Id.* Further, the physician of the applicant's spouse indicates that the applicant's spouse has lost 12 lbs. as a result of the applicant's supervision of his eating patterns and the couple's shared exercise regimen. *Id.* Significantly, the writing physician states, "In my opinion, [REDACTED] in his best medical and emotional health since I first assumed his care. A change in his personal life with either spouse separation or migration to another country for residency would be very damaging to his health and well being." *Id.* Counsel further corroborates the findings of the submitted letter through a letter from a medical health professional treating the applicant's spouse. *See Letter from James G. Fritz, Ph.D.*, dated August 28, 2002.

The situation presented in this application rises to the level of extreme hardship because the record demonstrates that the applicant's spouse would suffer extreme psychological and physical distress if the applicant were denied admissibility to the United States. The suffering experienced by the applicant's spouse would surpass the hardship typically encountered in instances of separation because of the documented improvements to the medical conditions suffered by the applicant's spouse as the result of his marriage.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's spouse and the passage of more than eight years since the applicant's immigration violations. The unfavorable factors in this matter are the applicant's willful misrepresentations to officials of the U.S. Government in obtaining admission to the United States. The AAO notes that the applicant does not appear to have a criminal record.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's flagrant breaches of the immigration laws of the United States, the severity of the applicant's fraud is at least partially diminished by the fact that, eight years have elapsed since the applicant's immigration violations. The AAO finds that the hardship imposed on the applicant's spouse as a result of her inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

Counsel asserts that the decision of the AAO erred in characterizing the hardship suffered by the applicant's spouse as merely financial and inconvenient. *Applicant's Motion to Reopen and Reconsider* at 7. Counsel establishes that the decision was incorrect based on the evidence of record at the time of the initial decision in accordance with 8 C.F.R. § 103.5(a)(3).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the previous decisions of the district director and the AAO will be withdrawn and the application will be approved.



ORDER: The motion is granted. The decision of March 12, 2003 dismissing the appeal is withdrawn and the waiver application is approved.