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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: JUN 20 2006

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant 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 and permanent resident daughters.

The district director concluded that the applicant 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 December 28, 2004.

On appeal, counsel for the applicant contends that the applicant has shown that qualifying relatives will experience extreme hardship if the applicant is prohibited from remaining in the United States. *Brief from Counsel on Appeal*, dated January 27, 2005. Counsel further contends that the district director applied an erroneous interpretation of law in rendering her decision. *Id.*

The record contains briefs from counsel in support of the appeal and the Form I-601 application; statements from the applicant's daughters; a copy of the naturalization certificate of one of the applicant's daughters; copies of permanent resident cards for two of the applicant's daughters; letters from the applicant's reverend, friends, and relatives addressing the applicant's situation and good moral character; a letter from the applicant's physician providing that she is in good health; a copy of the applicant's passport and Form I-94; an evaluation of the applicant and her daughters conducted by a licensed psychologist; financial and tax records for one of the applicant's daughters; school records for the applicant's daughters; reports on conditions in the Philippines, and; a statement from the applicant regarding her entry to the United States. The entire record was reviewed and considered in rendering this decision.

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 or about October 29, 1990, the applicant entered the United States using an assumed name. The applicant stated that she had been denied a U.S. visa several times, and that a travel agent encouraged her to misrepresent her identity to gain entry to the United States. *Statement from Applicant*, dated January 27, 2005. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (her identity) in order to procure entry into the United States. Accordingly, the applicant was found to be inadmissible to the United States under 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 does not contest her inadmissibility on appeal.

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 applicant or her children experience upon the applicant's deportation is irrelevant to section 212(i) waiver proceedings. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals.

The record reflects that the applicant is not married. Her former husband committed suicide on December 28, 2000. The applicant has not asserted that she has remarried since her former husband's death. The record further contains no reference to the applicant's parents, such as whether they are living, whether they are in the United States, and if so, whether they are U.S. permanent residents or citizens.

As provided above, in waiver proceedings under section 212(i)(1) of the Act, only hardship to the applicant's spouse or parents may be considered. The applicant has failed to show that she has a U.S. citizen or permanent resident spouse or parent who may serve as a qualifying relative. Accordingly, she has not

established that she is eligible for a waiver under section 212(i)(1) of the Act. For this reason, the appeal must be dismissed.

In her decision, the district director stated that: "In order to qualify for the benefit sought, extreme hardship must be demonstrated on [the applicant's] United States citizen daughter." Counsel takes issue with the fact that the district director focused on hardships to the applicant's U.S. citizen daughter, and not hardships to the applicant's two daughters who are U.S. permanent residents. However, both the district director's and counsel's statements constitute errors of law, as hardship to any of the applicant's daughters is not a relevant concern in these proceedings. Section 212(i)(1) of the Act.

The AAO acknowledges that the applicant's daughters will bear significant consequences if separated from the applicant or if they join her abroad. Yet, section 212(i)(1) of the Act clearly precludes consideration of their circumstances in the present waiver proceeding.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.