



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES, CA Date: **SEP 19 2006**

IN RE:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, CA, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, the decision of the district director will be withdrawn and the waiver application declared moot.

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 having procured admission into the United States by fraud or willful misrepresentation in 1994. The applicant married a U.S. citizen in the Philippines on April 5, 1994. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the assertions provided in the affidavit of the applicant's spouse and the evidence in the record did not support a finding of extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated December 27, 2004

On appeal, counsel does not address the issue of extreme hardship under section 212(i) of the Act. Counsel asserts that the applicant did not have a preconceived intent to remain in the United States and if the Service finds that the applicant did have a preconceived intent to remain in the United States, the equities in her case warrant a favorable exercise of the Service's discretion. *Counsel's Brief*, dated February 15, 2005.

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 indicates that the applicant married her U.S. citizen spouse on April 5, 1994 in the Philippines. The applicant's spouse and three U.S. citizen children returned to the United States after the wedding. In May 1994 the applicant applied for and received a transit visa to travel through Los Angeles, CA and Memphis, TN on her way to the Bahamas. The applicant states in her affidavit that after exiting the plane in Memphis, TN she accidentally missed her flight to the Bahamas. After missing this flight she flew to her spouse's home in Los Angeles, CA. She has been continually residing in the United States since this time.

The AAO notes that the record contains no evidence establishing that the applicant made a misrepresentation to an immigration official to procure an immigration benefit. There is no documentation regarding the

questioning of the applicant at the port of entries in Los Angeles, CA and/or Memphis, TN. In addition, there is no evidence to show that the applicant misrepresented herself on her transit visa application (Form DS-156). The AAO cannot make assumptions concerning the intent of the applicant and/or the statements she made to immigration officers. The director must support his assertions with documentation in the record. Therefore, the current record does not support a finding of fraud.

Thus, the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act and the applicant does not require a section 212(i) waiver.

ORDER: The appeal is sustained, the decision of the district director is withdrawn and the waiver application declared moot.