

**PUBLIC COPY**

U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Rm. 3000  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

*H2*

*identifying data deleted to  
prevent disclosure of information  
regarding national security or privacy*

[REDACTED]

FILE:

Office: SAN FRANCISCO, CA

Date: NOV 07 2007

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

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 procured entry into the United States by fraud or willful misrepresentation. 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 his spouse and four U.S. citizen step-children.

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 October 5, 2004.

In support of the appeal, counsel provides a brief, dated November 20, 2004, and an affidavit from the applicant's mother, [REDACTED], dated October 14, 2004. 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*, dated November 20, 2004. 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). The entire record was reviewed and considered in arriving at a decision on the appeal.

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 immigrant 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 the applicant was issued a B-2 Visitor Visa by the U.S. Embassy in Manila, Philippines on November 5, 2001. The stated purpose for entering the United States was to attend his father's funeral and burial in California; the applicant's father had died on [REDACTED]. On November 10, 2001,

the applicant entered the United States and was given permission to lawfully stay in the United States until May 9, 2002. The applicant subsequently received a B-2 extension of stay until November 8, 2002. During the I-485 interview on April 5, 2004, the applicant testified under oath that he entered the United States on November 10, 2001 to attend his father's funeral, despite the fact that the funeral had occurred on November 3, 2001. The district director concluded that the applicant had misrepresented his intentions to both the officer at the U.S. Embassy in Manila at the time of visa issuance and to the port of entry officer at the time of entry to the United States, as the applicant's father had already been buried.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit...

*DOS Foreign Affairs Manual*, § 40.63 N2. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

In the case at hand, the applicant, at the time of visa application and at the time of entry to the United States, intended to attend his father's funeral service and burial. The applicant was not notified by his mother that the burial had occurred on November 3, 2001, prior to visa issuance and entry to the United States. As the applicant's mother, [REDACTED] states in her affidavit, "...when my son informed me on or about November 6, 2004 that he had obtained the visa, I went ahead and purchased a round-trip ticket for him... The earliest flight from Manila to San Francisco that I could book him on was for November 10, 2001. When I spoke to my son, I did not tell him that we had gone ahead and buried my late husband on November 3, 2001 without waiting for him. For one, I did not want to disappoint him. And for two, he would only be missing the first stage of burial mourning for us Filipinos. Our burial custom is a three-stage process: the day of the burial, the 'pasiyam' or the 9<sup>th</sup> day after the funeral and the 40<sup>th</sup> day after the funeral. So even if [REDACTED] Jr. [the applicant] missed the day of the actual burial, he would still arrive in time for the 'pasiyam' and the 40<sup>th</sup> day where all our relatives would be present. My son did not consciously misrepresent his reason for coming to the US when he went to the US Embassy on October 29, 2001 which was to attend his father's funeral. He did not know that earliest appointment he would get would be November 5, 2001. When he went for his interview, he did not know that his father had already been buried as I did not inform him... I wanted him to come to the US to console me and to be with his older brother and other relatives and to be with us for the 'pasiyam' and the 40<sup>th</sup> day commemoration..." *Affidavit of [REDACTED]* dated October 14, 2004.

The applicant, in his notarized affidavit, further supports his mother's statements that he was not informed that his father had been buried at the time of visa issuance and at the time of entry to the United States. As the applicant states "...when I went to the US Embassy for my November 5 appointment, my mother did not inform me that my father was buried the day before on November 3 (November 4-Philippine time). When I told the US Embassy that I was going to Long Beach, California to attend the funeral of my father, I did not know that my father was buried the day before..." *Affidavit of [REDACTED]*, dated August 16, 2004.

Based on the record, it has not been established that the applicant made a willful or fraudulent misrepresentation to procure a visa and/or entry to the United States. The AAO thus finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. 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 his U.S. citizen spouse has established extreme hardship under section 212(i) of the Act. Accordingly, the appeal will be dismissed, the prior decision of the district director is withdrawn and the application for a waiver of inadmissibility is declared moot.

**ORDER:** The appeal is dismissed, the prior decision of the district director is withdrawn and the application for a waiver of inadmissibility is declared moot.