

Identifying data deleted to  
prevent clear and unambiguous  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*hr*

[REDACTED]

FILE:

Office: CHICAGO, ILLINOIS

Date:

OCT 01 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*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED], 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 admission into the United States by fraud or willful misrepresentation. She sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the District Director denied, finding that the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated December 20, 2004.

The AAO will first address the District Director's finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

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.

The record reflects that the applicant held a passport [REDACTED] bearing the name [REDACTED] issued on March 18, 1995, with the birth date of January 22, 1960. It shows that the applicant held a B1/B2 nonimmigrant visa relating to passport [REDACTED] and entered the United States using the visa and passport.

It also reflects that the applicant held a passport [REDACTED] issued on April 5, 2000, bearing the name [REDACTED] with the birth date of January 22, 1963. The last page of the passport indicates a cancelled passport number of [REDACTED] for a passport issued on January 15, 1996.

The record contains the certificate of marriage between [REDACTED] (born on January 22, 1963) and [REDACTED]. It shows a marriage date of January 21, 1996.

The birth certificate of the applicant, which is contained in the record, reflects the name [REDACTED]; however, the date of birth is unintelligible.

In the Record of Sworn Statement the applicant indicates that she cannot explain why the last page of the most recent passport [REDACTED] indicates a previous cancelled passport number of [REDACTED]. She states that she married her husband in 1996, and that when she entered the United States in 1995 she presented the passport in her maiden name [REDACTED]. In response to the question "[s]o you were using your [sic] married name before you entered the US in 1995?" the applicant stated "well we were secretly married." The applicant states that she did not misrepresent herself to gain entry into the United States because her "name is really [REDACTED] and that she "used the name [REDACTED] legal matters." She states that she did not have time to amend the birth date on the passport [REDACTED].

On appeal, the counsel states that the applicant's "ceremonial marriage" was not "registered," because the applicant knew that the consequences of the marriage would lead to automatic revocation of the second preference visa petition. Counsel states that the "real" marriage took place on January 21, 1996, and that the

applicant made no attempt to hide her "real" marriage. Counsel states that [REDACTED] is the applicant's nickname and that this name is used on the birth certificate of her child.

The AAO finds that the statements made by the applicant in the Record of Sworn Statement and the documentation in the record are sufficient to establish that the applicant willfully misrepresented a material fact, her identity, so as to procure a visa and admission into the United States. The applicant changed her name from [REDACTED] with the birth date of January 22, 1963, to [REDACTED] with the birth date of January 22, 1960, to conceal her identity.<sup>1</sup> Based on the evidence in the record, the district director was correct in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that a waiver of inadmissibility is not warranted.

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 applicant seeks a waiver of inadmissibility. 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 to the applicant and her child is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen father. The AAO notes that there is no evidence in the record to establish that the applicant's mother is a U.S. citizen or lawful permanent resident. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

Extreme hardship to the qualifying relative must be established in the event that he or she joins the applicant; and in the alternative, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The BIA in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this

---

<sup>1</sup> Collectively, the documents in the record suggest that the applicant's actual date of birth is January 22, 1963.

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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

On appeal, counsel states that the applicant's father did not work after his stroke in December 2002. He states that the applicant's father was paid for accumulated leave and retirement in 2003 and that his 2004 income reflects the fact that he is "incapacitated." Counsel claims that the applicant would hold low-paying jobs in the Philippines and would not be able to afford health benefits or provide an education for her four-year-old daughter.

The applicant makes a claim of "extreme hardship" to her father in the event that the waiver application is denied and her father remains in the United States without her. The applicant claims that her father is legally blind, is a diabetic, suffered from a cerebral infarction in 2002 and in 2003, and was diagnosed with peritonitis in 2003. She states that her father has been under her care and that she is the only one to care for him. The applicant states that her father would be unable to perform daily chores without help from family members and that he cannot afford private care. *Applicant's Statement in Support of Waiver Application.*

The May 8, 1998 letter from [REDACTED], indicates that the applicant's father, [REDACTED] has age-related macular degeneration and incipient cataracts." The document, dated February 13, 1998, and signed by [REDACTED] states that cataract surgery will do little to improve the vision in Mr. [REDACTED] right eye.

The letter, dated March 1, 2004, from [REDACTED] indicates that the applicant has been employed as a caregiver since August 2001.

A submitted wage statement from American Airlines reflects [REDACTED] year-to-date earnings of \$50,751.02. The income tax record for 2002 reflects that [REDACTED] filed a joint return with his wife, [REDACTED]. Their combined income is shown as \$75,770. The record contains a letter, dated January 15, 2002, verifying [REDACTED]'s full-time employment as a fleet service clerk with American Airlines. The record also contains income tax records for [REDACTED] and his wife, which relate to 2000, 1999, and 1998.

The applicant claims that she is the only person to care for her father; however, the record conveys that Mr. [REDACTED] is married and his wife lives with him. No evidence suggests that she is not able to care for her husband.

Furthermore, although in 1998 [REDACTED] was diagnosed by [REDACTED] with problems with his right eye (age-related macular degeneration, with legal blindness, and immature cataract), the record shows that he continued to work full-time with American Airlines. No evidence in the record substantiates the claim that [REDACTED] is unable to perform daily chores by himself and that he cannot afford private care, if it is established that he requires such care. Although counsel asserts that [REDACTED] is retired, the AAO finds that no documentation in the record reflects this. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N

Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel claims that the applicant would hold low-paying jobs in the Philippines and would not be able to afford health benefits or provide an education for her daughter. Counsel offers no explanation of how this would result in hardship to the applicant's father. As previously stated, hardship to the applicant and her child will be considered only to the extent that it results in hardship to a qualifying relative.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she 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, 8 U.S.C. § 1182(i), the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.