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U.S. Citizenship
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FILE:

Office: SAN FRANCISCO, CALIFORNIA

Date: **MAY 20 2008**

IN RE:

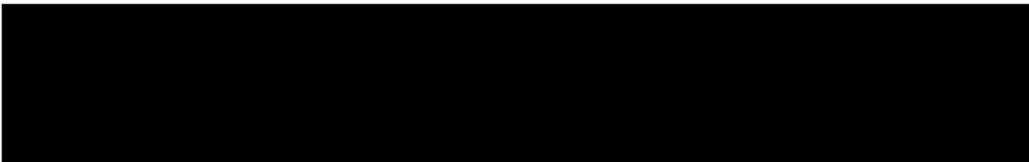
Applicant:



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, Chief
Administrative Appeals Office

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

The record reflects that 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering into a marriage for the purposes of evading immigration laws. The record indicates that the applicant's spouse is a United States citizen. The applicant 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 United States citizen spouse and two United States citizen children.

The District Director found that "[t]he applicant's attempt to persuade a favorable decision, does not merit the exercise of discretion at this time." *District Director's Decision*, dated August 22, 2006. Additionally, the District Director determined that "the applicant committed marriage fraud under the purview of Section 204c. Section 204c cannot be waived. Therefore, the applicant is not eligible to receive a waiver under this section. There is no underlying application for adjustment of status. Thus, the waiver serves no purpose and hereby is moot." *Id.*

Counsel claims that the District Director "states that because [the applicant] has no underlying application for Adjustment of Status to follow an unapprovable Immigrant Petition that her application for waiver serves no purpose and is therefore moot. However, [the applicant] is not applying to waive her inadmissibility in order to file an as [sic] the beneficiary of any Immigrant Petition, but rather she wishes to be admitted into the U.S. under Section 203(d) of the INA, which allows for a spouse or child not otherwise entitled to immigrant status and/or the immediate issuance of a visa under subsections 203(a), (b) or (c) to be entitled to the same status and the same order of consideration provided in the respective subsection if accompanying or following to join a principal spouse or parent...[The applicant] indicated on her applications filed with the BCIS that she intended to depart the United States and then follow to join her husband." *Appeal Brief*, pages 13-14, November 2, 2006. The AAO notes that since the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and she intends to apply for an immigrant visa, she must file her "Form I-601 at the consular office considering the visa application." *See* 8 C.F.R. § 212.7(a)(1).¹ Additionally, since the applicant is currently residing abroad, she is required to file a Form I-601 simultaneously with the Form I-212.

8 C.F.R. § 212.2(d) states, in pertinent part:

(d) *Applicant for immigrant visa.* Except as provided in paragraph (g)(3) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. Except as provided in paragraph (g)(3) of this section, if the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, Form I-601, Application for Waiver of Grounds of Excludability, must be filed *simultaneously* with the Form I-

¹ The AAO notes that if the applicant were applying for adjustment of status, then she would file her waiver with the District Director considering her application for adjustment of status. *See* 8 C.F.R. § 212.7(a)(ii).

212 with the American consul having jurisdiction over the alien's place of residence. The consul must forward these forms to the appropriate *Service office abroad with jurisdiction over the area* within which the consul is located.

Emphasis added.

The AAO notes that there is no evidence that the applicant filed her Form I-212 and Form I-601 simultaneously with the American consul having jurisdiction over the alien's place of residence; therefore, the applicant's Form I-601 was not properly filed. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.