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Bureau of Citizenship and Immigration Services

Handwritten initials: AS

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[Redacted]

JUL 17 2003

FILE: [Redacted] Office: SAN FRANCISCO, CA

Date:

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Handwritten signature: Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

JUL 17 03 - 05H2212

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of the Philippines. The applicant 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States (U.S.) citizen and she is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and child.

The district director found that the applicant failed to establish that her husband would suffer extreme hardship if the applicant were removed from the United States. The district director reasoned, in part that:

The affidavit submitted by the applicant merely describe[s] the usual hardships that result from separation from a family member. In addition, the applicant's husband has asserted in his affidavit that the applicant may be required to live in an area in the Philippines that is experiencing a civil war. However, no additional evidence has been submitted in support of this statement and, further hardship to the applicant is not a factor in these proceedings.

See *District Director Decision*, dated September 25, 2001 at 4. On appeal, the AAO affirmed the district director's decision.

In his motion to reconsider, counsel asserts that the AAO failed to address the Notice of Appeal assertions that the perpetual bar to admission is inherently extreme and that the applicant's husband will suffer extreme hardship if left alone to care for their child's medical, emotional and psychological problems.

Although counsel states in the Notice of Appeal, Form I-290, that the applicant's spouse raised the issue that "the perpetual bar as inherently extreme" upon review of the evidence in the record, this office found no such assertion by the applicant's husband. Moreover, the general Notice of Appeal assertion that the perpetual bar to admission under

section 212(a)(6)(C) of the Act is inherently extreme, is unsupported by any legal argument on appeal, and counsel makes no reference to legal statutes or court decisions to support this claim. Counsel also fails to clarify the manner in which the 212(a)(6)(C) bar is extreme or the relevance of this assertion to the applicant's case. Furthermore, a general challenge to the legality of the law itself is outside of the appellate jurisdiction of the AAO.

Counsel also asserts that the AAO erred in not addressing "the extreme hardship that would befall the spouse who will be left alone to take care of the child's medical, emotional and psychological problems." See *Motion to Reconsider*, dated August 14, 2002. It is first noted that the record contains no evidence to indicate that the applicant's child has any medical, emotional and psychological problems. Moreover, although the applicant's husband states in his affidavit that he would not be able to take care of the couple's child (as noted in the AAO Decision, dated July 15, 2002), no other details or information regarding his inability to care for the child or the nature of the hardship he would suffer upon raising the child are provided. Furthermore, both the district director and AAO decisions make note of the husband's assertion that he will not be able to care for his U.S. citizen child if his wife leaves the U.S. and both decisions address this element in their analyses of hardship factors in the applicant's case. See *District Director Decision* at 3-6. See also *AAO Decision* at 4.

Based on the evidence in the record, the applicant has failed to establish that her husband would suffer extreme hardship if the applicant were removed from the United States. This office thus affirms the previous district director and AAO decisions.

ORDER: The motion to reconsider is granted and the prior district director and AAO decisions are affirmed.