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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

JUN 11 2003

FILE: [redacted] Office: Los Angeles 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]

PUBLIC COPY

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.

Robert P. Wiemann, Director
Administrative Appeals Office

JUN1103_02H2212

DISCUSSION: The waiver application was denied by the Acting District Director, Los Angeles, California, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 a nonimmigrant visa and admission into the United States by fraud or willful misrepresentation in 1990. The applicant married a native of the Philippines (hereafter referred to as Mr. [redacted] in the United States on November 30, 1994, and her spouse became a naturalized U.S. citizen on August 28, 1997. She is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The acting district director reviewed the record and a July 17, 1999 report by a clinical psychologist regarding Mr. [redacted] diagnosis of DSM IV 309.0 Adjustment Disorder with Depressed Mood condition. The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the applicant lived with Mr. [redacted] from 1993 until 2002 and they have two children together. Counsel indicates that Mr. [redacted] repeatedly inflicted emotional, psychological and sexual abuse on the applicant. Counsel states that she has now filed a Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) as a self-petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident. Counsel submits a copy of that petition for review, and it is noted that the applicant's address is listed in care of counsel's address. The Form I-360 petition reflects that the applicant lived with Mr. [redacted] from September 1992 until August 2002.

It is further noted that, after alleging spousal abuse, counsel states in the January 9, 2003 appeal, that the Bureau failed to give any weight to a psychologist's report dated July 17, 1999, indicating that Mr. [redacted] was diagnosed with DSM IV 309.0 Adjustment Disorder. Counsel states on appeal that Mr. [redacted] would certainly suffer extreme hardship if his wife were ordered removed. The psychologist's report has not been updated.

Counsel's letter of February 4, 2003, also indicates that the applicant tried to make her marriage work, and always lived in fear that Mr. [redacted] would not continue to petition for her and that she would not be able to obtain her "green card." Counsel indicates that Mr. [redacted] always threatened that she would lose her children because of this and he blackmailed her into giving him money to complete the immigration process.

The record reflects that the applicant procured a nonimmigrant visa in 1990 as a married female when, in fact, she was unmarried. She

used that document to procure admission into the United States on June 24, 1990, as a nonimmigrant visitor. A search of the marriage records of the National Statistics Office in the Philippines from 1974 to 1993 failed to reveal any marriage record relative to the applicant, [redacted] Mr. [redacted] divorced Josefina Sebastian on November 17, 1994, and married the applicant on November 30, 1994.

The applicant indicated on her Form I-601 waiver application that, "I said I was married in order to get a visa to come to the United States, but I was never married." In support of the first Form I-130 Petition for Alien Relative filed on June 12, 1995, the applicant provided a death certificate of [redacted] dated February 10, 1991, which listed the applicant, [redacted] as the spouse. The applicant also listed [redacted] as a former husband on her Form G-325A signed by her on June 5, 1995. Since there is no evidence in the record that the applicant was previously married, it is presumed that the information in the document regarding the applicant's marital status is not credible. The applicant indicated no prior husbands on the second Form I-130 visa petition filed on September 23, 1997, or on her second Form G-325A signed by her on September 15, 1997.

Section 212(a)(6)(C) of the Act provides, in 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] may, in the discretion of the Attorney General, 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 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.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the

relief available to aliens who have committed fraud or misrepresentation. These amendments are applicable to pending cases. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999). Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. *See Fiallo v. Bell,* 430 U.S. 787 (1977); *Reno v. Flores,* 507 U.S. 292 (1993); *Kleindienst v. Mandel,* 408 U.S. 753, 766 (1972). *See also Matter of Yeung,* 21 I&N Dec. 610, 612 (BIA 1997).

In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, P.L. No. 99-639, and redesignated as section 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). In the Act of 1990, which became effective on June 1, 1991, Congress imposed a statutory bar on those who made oral or written misrepresentations in seeking admission into the United States and on those who made material misrepresentations in seeking admission into the United States or in seeking " other benefits" provided under the Act. Congress made the amended statute applicable to the receipt of visas to, and admission of, aliens who committed acts of fraud or misrepresentation, whether those acts occurred before, on, or after the date of enactment.

To recapitulate, the applicant knowingly procured a nonimmigrant visa from a consular officer and used that document to gain admission into the United States by fraud or misrepresentation in June 1990.

Congress has increased the penalties on fraud and willful misrepresentation, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar and eliminating children as a consideration in determining the presence of extreme hardship. Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (the Board) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: the presence of a lawful permanent resident or United States citizen spouse or parent in this 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 finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The Board noted in *Cervantes-Gonzalez* that the alien's wife knew that he was in deportation proceedings at the time they were married. The Board stated that this factor goes to the wife's expectations at the time they were wed. The alien's wife was aware that she may have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The alien's wife was also aware that a move to Mexico would separate her from her family in the United States. The Board found this to undermine the alien's argument that his wife will suffer extreme hardship if he is deported. The Board then refers to *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), where the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The applicant in the present matter had been unlawfully present in the United States since 1990 and it must be presumed that her husband was aware of this when they married in November 1994.

The Board in *Cervantes-Gonzalez, supra*, also referred to *Silverman v. Rogers*, 437 F.2d 102 (1st Cir. 1970), cert. denied 402 U.S. 983 (1971), where the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

In *Matter of Cervantes-Gonzalez*, the Board also held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a section 212(i) waiver application in the exercise of discretion. *Matter of Tijam*, 22 I&N 408 (BIA 1998), followed. The Board declined to follow the policy set forth by the Commissioner in *Matter of Alonso*, 17 I&N Dec. 292 (Comm. 1979); *Matter of Da Silva*, 17 I&N Dec. 288 (Comm. 1979), and noted that the United States Supreme Court ruled in *INS v. Yueh-Shaio Yang*, 519 U.S. 26 (1996), that the Attorney General (now referred to as the Secretary) has the authority to consider any and all negative factors, including the respondent's initial fraud. In *Matter of Tijam*, p.416, the Bureau contended that as a matter of policy it has decided to withdraw from *Matter of Alonso*. In its supplemental brief on appeal, the Bureau states that it "will hereinafter consider an alien's entry fraud as an adverse factor in determining whether an alien merits a favorable exercise of discretion. The AAO is bound by that decision.

The court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

It is noted that the Ninth Circuit Court of Appeals in *Carnalla-Muñoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam, supra*, need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter entered the United States in June 1990 by fraud or misrepresentation and married her spouse in November 1994. She now seeks relief based on that after-acquired equity. However, as previously noted, a consideration of the Attorney General's discretion is applicable only after extreme hardship has been established.

There are no laws that require a United States citizen to leave the United States and live abroad. Further, the common results of deportation are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Further, it appears that the applicant and Mr. Castillo no longer live together as she has filed a self-petition alleging physical, emotional and sexual abuse. This would negate any claim of hardship to Mr. Castillo caused by their separation.

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

ORDER: The appeal is dismissed.