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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE:

Office: SAN FRANCISCO, CA

Date: **MAR 19 2003**

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:

Self-represented

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

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 record reflects that the applicant is a native and citizen of Vietnam who entered the United States on October 1, 1991, and was paroled for an indefinite period as a Public Interest Parolee (PIP) under section 212(d)(5) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1182(d)(5).

The applicant's application to adjust his status to that of permanent resident was denied by the District Director, San Francisco on January 7, 1994. In his decision, the district director found that the applicant willfully misrepresented the fact that he was married at the time that he procured entry into the United States, and that PIP status was not available to married sons and daughters of principal applicants. The applicant was subsequently found excludable pursuant to section 212(a)(6)(C)(i) of the Act; 8 U.S.C. § 1182(a)(6)(C)(i). The district director noted that the priority date of the applicant's 1987 original visa petition was still unavailable and that when the priority date became available, the applicant would be allowed to apply for an immigrant visa. See *District Director Decision*, dated January 7, 1994.

The applicant filed an application to adjust status on June 26, 2001 claiming that a priority date had become available. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C) of the Act, and the application was denied on September 4, 2002.

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 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).

In support of his September 4, 2002, decision, the district director stated:

[D]uring your first adjustment interview on April 12, 1993, you revealed that you were married to [REDACTED] in Ba Xuyuen, Vietnam, on August 12, 1990 However, during a subsequent filing, you were interviewed on April 22, 2002, and after much prompting, you failed to admit that you willfully misrepresented your marital status during your interview in Ho Chi Minh City in 1991.

Notwithstanding, you committed willful misrepresentation on at least two separate occasions: 1) When you presented yourself for interview for a visa in Vietnam and 2) When you failed to disclose at your April 22, 2002, interview that you circumvented the normal visa issuing process. A waiver of inadmissibility is a discretionary application and is dependent on whether the applicant merits the favorable discretion of the Attorney General. In your case, the aforementioned facts and systematic pattern of circumventing immigration laws are significant adverse factors.

See *District Director Decision*, dated September 4, 2002 at 3. The district director additionally concluded that the applicant failed to establish extreme hardship to a qualifying relative. *Id.*

The applicant filed a Notice of Appeal to the Administrative Appeals Unit on October 7, 2002. The appeal stated, "I would like to state my marriage [matter] with the appeals unit officer in present. I do not [think] it was fair to me when I was interviewed on 04/22/02 with the officer." The applicant submitted no other brief, evidence or statement in support of his appeal.

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). For example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) 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.

In *Cervantes-Gonzalez, supra*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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 significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566.

In this case, the applicant has neither made an argument nor provided any evidence that a qualifying relative would suffer extreme hardship if he were removed from the United States.

This office thus affirms the district director's conclusion that:

In this case, although . . . you might suffer the normal separation of family hardship, a total lack of documentation in the record fails to establish existence of extreme emotional, financial and personal hardships to your . . . parent which would result from [your] removal. See *District Director Decision*, dated September 4, 2002 at 3.

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.