

H2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwanted invasion of personal privacy

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



MAY 06 2003

FILE: [Redacted] Office: HONOLULU, HI 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

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider initiated by the district director. The motion will be granted and the previous district director and AAO decisions will be withdrawn. The waiver application is moot, as the evidence does not establish that the applicant procured admission into the United States (U.S.) by fraud or willful misrepresentation. She is thus not inadmissible.

The record reflects that the applicant is a native and citizen of Japan, and that she traveled back and forth between the U.S. and Japan for approximately four years between 1992 and 1997. The applicant married a U.S. citizen in September 1996. In October 1996, the applicant filed a Form I-485 (Application to Register Permanent Residence or Adjust Status) with the Immigration and Naturalization Service ("Service", now known as the Bureau of Citizenship and Immigration Services). The applicant was advised not to leave the United States without an approved Form I-131 (Application for Travel Document) from the Service, however, the applicant did depart the United States without an approved I-131. The Form I-485 was thus considered abandoned. On May 31, 1997, the applicant sought admission into the United States as a nonimmigrant visitor pursuant to the visa waiver program. The applicant was admitted into the United States with authorization to remain until August 30, 1997, and she was advised that if she decided to return to the United States to live permanently, her spouse should file a Form I-130 (Petition for Alien Relative) in Japan. Instead, the applicant filed an I-130 in Hawaii in August 1997.

The record indicates that the previous district director and AAO decisions stated that beginning in October 1992, the applicant was employed in Hawaii by the HTH Corporation (HTH). The decisions additionally stated that instead of departing the United States by August 30, 1997, the applicant resumed her prior work with HTH, and that the evidence of continuous employment with HTH, contradicted the applicant's statements that she worked only for the Body and Soul boutique shop after her marriage in September 1996. Based on the HTH employment history evidence, the district director determined, and the AAO affirmed, that the applicant was an intending immigrant and that she procured her admission on May 31, 1997 by willful misrepresentation.

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.

An October 24, 2002, memorandum to the AAO from the district director, Honolulu, Hawaii states that:

The AAU decision and our decision erroneously referred to a letter from HTH Corporation verifying [REDACTED] employment since 1992. In reviewing the record, it is noted that this letter relates to the employment of [REDACTED] [REDACTED] the mother-in-law of the subject and did not relate to [REDACTED]. Both decisions relied on this letter as the basis for a fraud determination Based on the above discrepancies, the case is forwarded for possible reconsideration of the decision rendered on June 27, 2000.¹

A review of the record indicates that the applicant's name and U.S. admission and departure history were on a Service "lookout list", and that she was listed as someone who should not be admitted into the U.S. without further questioning. At the time of her admission into the U.S. on May 31, 1997, the applicant stated that she wanted to pack her husband's belongings and return with him to Japan. The applicant claimed that her husband had been offered a job with her father's company and that they decided to move to Japan because of the problems they had experienced in adjusting the applicant's status. The record indicates further that the Immigration Inspector who admitted the applicant was aware of the lookout list and that the applicant was admitted because the inspector found her stated purpose at the time of admission to be credible.

Once the erroneous HTH employment letter is removed from the record, no other evidence remains to indicate that the applicant was dishonest with Service officials, or that she procured her admission on May 31, 1997, by willful misrepresentation. The prior district director and AAO decisions will therefore be withdrawn. Additionally, the waiver application will be considered moot since there is insufficient evidence to establish that the applicant is inadmissible.

ORDER: The previous district director and AAO decisions are withdrawn and the application for a waiver of grounds of inadmissibility is denied as moot.

¹ The AAO was unable to review the actual HTH Corporation letter, as the evidence in the record did not contain a copy of the letter.