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U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: MANILA, PHILIPPINES Date: JUL 29 2004

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 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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Manila, Philippines, 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 the Philippines. She 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 sought to procure a visa by knowingly and willfully misrepresenting a material fact. In addition the Officer in Charge found the applicant inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more. The applicant is the beneficiary of an approved Petition for Alien Fiance(e), Form I-129F. She now seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to travel to the United States and reside with her fiancé.

The Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon her qualifying relative and denied the application accordingly. *See Officer in Charge's Decision* dated June 25, 2003.

The AAO finds that the Officer in Charge erred in finding the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

A thorough review of the record of proceedings and Citizenship and Immigration Services (CIS) electronic database fails to reveal that the applicant ever entered the United States. Since the applicant has never entered the United States she is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record reflects that a Consular Officer in Manila, Philippines found the applicant inadmissible for attempting to procure an immigration benefit in violation of the law. Specifically the applicant failed to reveal that a Form I-129F was previously submitted and approved on her behalf.

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 (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], 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 [Secretary] 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.

On appeal counsel states that the applicant is not inadmissible for misrepresentation since her previous fiancé had withdrawn the petition and that was why she did not mention the previous Form I-129F. Furthermore counsel asserts that the Officer in Charge failed to correctly assess the extreme hardship the applicant's U.S. citizen fiancé would suffer if the waiver application were denied and she is not permitted to travel to the United States.

The AAO finds that the Officer in Charge erred in finding that the applicant has a qualifying family member as required to file a waiver under section 212(i) of the Act. As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress did not mention extreme hardship to a U.S. citizen or resident fiancé and therefore a fiancé is not a qualifying family member.

A review of the documentation in the record of proceedings reflects that the applicant is the beneficiary of a Form I-129F filed by her U.S. citizen fiancé. In addition the record reflects that the applicant's parents reside in the Philippines. The applicant has failed to show that she has a qualified family member required to file a waiver under section 212(i) of the Act.

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.