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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: JUN 8 2004

IN RE: [redacted]

PETITION: 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 PETITIONER:

[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 District Director, San Francisco, California. A subsequent appeal and motion to reconsider were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reconsider. The motion will be granted, the appeal will be sustained and the previous decisions of the acting district director and the AAO will be withdrawn.

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 admission into the United States by fraud or willful misrepresentation on August 11, 1994. The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 25, 2001. The decision of the district director was affirmed on appeal and on first motion to reconsider by the AAO. *See* Decisions of the AAO, dated July 15, 2002 and July 17, 2003, respectively.

On second motion to reconsider, counsel states that the applicant is now providing evidence of her eldest child's medical problems to substantiate her claim of extreme hardship to her U.S. citizen husband. *Motion to Reconsider denial of Application for Adjustment of Status and of 212(i) Application for Waiver/Motion to Reopen Maria Glenda Puerto Bollozos A 70 186 066*, dated August 15, 2003.

On second motion, counsel submits copies of medical records for the applicant's child and copies of informational overviews and articles addressing medical conditions suffered by the applicant's child. The entire record was considered in rendering this decision.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. Therefore, counsel's assertions regarding hardship to the applicant's child are only considered to the extent that they reflect hardship imposed on the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems 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.

On appeal and first motion to reconsider, the AAO noted that the record did not contain evidence of the asserted medical, emotional and psychological problems suffered by the applicant's child that would result in extreme hardship to her U.S. citizen husband if the applicant were removed from the United States. *Motion to reopen Decision of the AAO* at 3. On second motion to reconsider, counsel provides documentation evidencing the extensive surgery and medical treatment undergone by the applicant's daughter as a result of her battle with tetraology of fallot, a combination of four heart defects. *Motion to Reconsider denial of Application for Adjustment of Status and of 212(i) Application for Waiver/Motion to Reopen Maria Glenda Puerto Bollozos A 70 186 066* at 2. The medical history of the applicant's child is extensive and reflects ongoing treatment. Counsel establishes that the applicant's child is continuously medicated and periodically

must submit to additional surgeries and procedures as a result of her health conditions. *Id.* at 3. *See also* Tetraology of Fallot, Texas Heart Institute, updated May 2002. The record establishes that both the applicant and her spouse work part-time in order to afford their child the attention that her medical condition requires. In the absence of the applicant, her spouse would certainly suffer financial hardship as a result of caring for their daughter and working to pay the family's expenses. *Id.* The AAO notes that counsel does not address the hardship posed to the applicant's husband if he relocates to the Philippines to remain with the applicant. However, owing to the medical condition of the couple's child, it is apparent that the family is unable to relocate together to the Philippines.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's husband; the applicant's apparent lack of a criminal record and the passage of close to ten years since her violation of the immigration laws of this country.

The unfavorable factor in this matter is the applicant's willful misrepresentation to officials of the U.S. Government in procuring admission to the United States.

It is concluded that the favorable factors outweigh the unfavorable ones. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the motion to reconsider will be granted and the appeal will be sustained.

ORDER: The motion to reconsider is granted. The appeal is sustained. The previous decisions of the district director and the AAO are withdrawn, and the application is approved.