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FILE:



Office: MANILA, PHILIPPINES

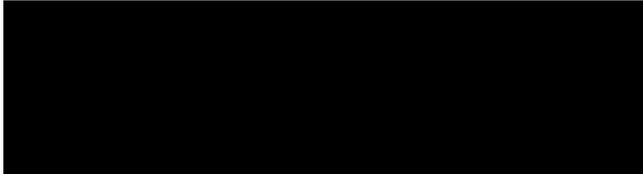
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IN RE:



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:



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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Manila, Philippines. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the OIC and the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of the Philippines who 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 attempted to procure a visa to the United States by fraud or willful misrepresentation. The record indicates that the applicant is the daughter of a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen mother.

The OIC found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for accruing more than one year of unlawful presence. *Decision of the Officer-in-Charge*, dated July 7, 2003. However, the AAO notes that there is no evidence that the applicant was ever in the United States. Therefore, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's mother and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated July 7, 2003. On June 17, 2005, the AAO affirmed the OIC's decision on appeal. *Decision of the AAO*, dated June 17, 2005.

In the present motion to reconsider, the applicant, through counsel, reasserts that the applicant did not "willfully" misrepresent that she was previously married, because she was considered to be "single" after her first marriage was "dissolved," under the Civil Code of the Philippines. *Motion to Reconsider*, page 5, filed August 18, 2005.

The issues raised by counsel in the motion to reconsider were all brought up in the initial appeal, and those issues were addressed by the AAO. Counsel did not identify any legal errors in the prior AAO or OIC decisions, and aside from the statement that the applicant did not believe that she needed to obtain a court decree and have her first spouse formally declared dead, no new information or evidence was submitted in the motion to reconsider. Even if the applicant had obtained the court decree, she withheld the fact that she had been previously married when interviewed for her visa. This shut off the line of inquiry that was material to the visa she was requesting at the time. The fact that she is now applying as the daughter of a United States citizen rather than as the spouse, does not negate that initial misrepresentation.

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

- (a) Motions to reopen or reconsider

....

(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

....

(3) Requirements for motion to reconsider. 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 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.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

....

The issues raised in counsel's motion to reconsider were thoroughly addressed in the prior AAO decision, and counsel failed to establish any error in the AAO or the OIC decisions.

Because counsel failed to identify any erroneous conclusion of law or statement of fact in his appeal, the motion will be dismissed.

ORDER: The motion is dismissed and the previous decisions of the Officer-in-Charge and the AAO will be affirmed.