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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

MAY 06 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act; 8 U.S.C. § 1182(e).

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the waiver application declared moot because the applicant is presently a U.S. lawful permanent resident.

The applicant is a native of the Philippines. He is subject to the two-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(e), because he participated in an exchange program for the purpose of promoting international, educational and cultural exchange.

The applicant was admitted into the United States as a J1 nonimmigrant exchange visitor on April 27, 1983. His J1 nonimmigrant status ended on December 31, 1984. Seeking to waive his two-year foreign residence requirement for adjustment of status purposes, the applicant filed a Form I-612, Application for Waiver of the Foreign Residence Requirement under Section 212(e) of the Act (I-612 Application).

In a decision dated February 25, 2004, the director, California Service Center (CSC) denied the I-612 application, based on a finding that the applicant had failed to establish exceptional hardship to a qualifying relative. Specifically, the director found that the applicant had failed to submit medical documentation to establish that his mother is in poor health or that she has Alzheimer's disease. The director found further that the Philippines is the home country of the applicant's spouse and child, that the applicant should be able to work in the Philippines, and that it should not be disturbing to his spouse and child to depart the U.S. for two years.

On March 26, 2004, the applicant, through counsel, filed a motion to reconsider, or in the alternative, a notice to appeal, the denial of his I-612 application for waiver of his foreign residence requirement under section 212(e) of the Act. Counsel asserts that the director previously found in 2001, that the applicant had established exceptional hardship to a qualifying relative. Counsel asserts further that the Department of State, Waiver Review Division had granted approval of the applicant's I-612 waiver application in June 2001. In addition, counsel asserts that the applicant's hardship evidence has grown stronger since 2001, and that the applicant qualifies for an I-612 waiver based on exceptional hardship to his qualifying relatives.

Section 212(e) of the Act provides in pertinent part that:

> (e) No person admitted under section 101(a)(15)(J) or acquiring such status after admission
>
> > (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his last residence
> >
> > . . .
> >
> > [s]hall be eligible to apply for an immigrant visa, or for permanent residence. . . until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of a least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency . . . or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship

> upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien) . . . the Attorney General [now the Secretary, Homeland Security, "Secretary"] may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General [Secretary] to be in the public interest

The AAO notes that in the present matter, the purpose of the I-612 waiver application is to enable the applicant to acquire lawful permanent resident status without his having to fulfill the two-year foreign residence requirement.

A review of the record reflects that on May 24, 2004, the Los Angeles, California, U.S. Citizenship and Immigration Services (CIS) district office adjusted the applicant's immigrant status to that of a lawful permanent resident under the alien number (A number)[redacted] Because the applicant is presently a

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[1] The record reflects that CIS has assigned the applicant two alien file numbers (A numbers). Information contained in the record reflects the following history relating to the applicant's A numbers:

The applicant was assigned the A number[redacted] March 1978. The CIS Los Angeles district office subsequently assigned the A number[redacted] e applicant for adjustment of immigrant status purposes in August 1997.

In conjunction with the applicant's adjustment of immigrant status application, counsel for the applicant attempted to file the applicant's I-612 application with the Los Angeles district office. The Los Angeles district office accepted the I-612 application filing fee under the A number[redacted] However, the Los Angeles district office did not have jurisdiction to adjudicate the I-612 application. Counsel subsequently sent the I-612 application to the California Service Center (CSC) for adjudication.

The CSC created a working file for the applicant's I-612 application on April 9, 1998. The working file was given the number, [redacted] However, CSC erroneously classified the working file as an I-212 (application for permission to re-enter after deportation) application rather than as an I-612 application. The CSC consolidated the applicant's working file, [redacted] into his preexisting A file number[redacted] n August 31, 1998.

On March 6, 2001, the CSC director forwarded a waiver review request (I-613 Waiver Request) to the Waiver Review Division of the Department of State (DOS) under the A number[redacted] The I-613 waiver request contained the CSC director's findings that, "[c]ompliance with the foreign residence requirement would impose exceptional hardship upon the applicant's U.S. citizen or lawful permanent resident alien relative", and that "[t]he applicant has lived in the United States since April 27, 1983. He has one United States citizen child born in 1987. His other foreign born child really only knows the United States as home. The children are doing well in the United States and should remain. The applicant also has a United States citizen mother who is afflicted with[redacted] and requires care." The DOS waiver review division granted the I-613 waiver request on June 12, 2001, and the I-612 application contains a CSC approval stamp dated December 30, 2003.

In January 2004, the CSC discovered that the applicant's I-612 application[redacted] had erroneously been classified as an I-212 application. To correct the error, CSC assigned the working file number,[redacted] to the applicant's I-612 application. The file was reclassified as an I-612 application on January 8, 2004. On February 25,

lawful permanent resident, the AAO finds that the present appeal is moot. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

2004 the CSC director denied the I-612 application under the A number [redacted] based on a finding that the applicant had failed to establish exceptional hardship to a qualifying relative.

On May 24, 2004, the applicant was accorded lawful permanent resident status under A number [redacted]