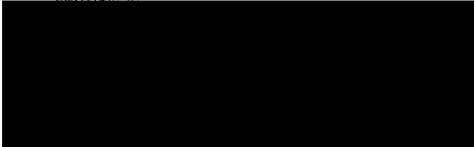


Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H2

FILE:



Office: SAN FRANCISCO, CA

Date: **JUL 20 2005**

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, CA and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen and reconsider was granted and the order dismissing the appeal was affirmed. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed.

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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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 his family.

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. *Decision of District Director*, dated October 23, 2001.

The AAO notes that the U.S. citizen petitioner in the underlying Form I-130, Petition for Alien Relative, has withdrawn the I-130 Petition. *Withdrawal Form*, dated October 26, 2004. The applicant's spouse stated that the applicant abandoned her, but he wanted to stay married to her while awaiting his green card approval. *See Id.* The viability of the applicant's Form I-485, Application to Register Permanent Residence or to Adjust Status, and Form I-601, Application for Waiver of Grounds of Excludability, are based on the aforementioned, underlying Form I-130. As the Form I-130 has been withdrawn, the applicant's adjustment of status and waiver applications are moot.

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. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant cannot meet that burden due the Form I-130 being withdrawn. Accordingly, the previous decisions will be affirmed.

ORDER: The previous decisions of the District Director and the AAO will be affirmed as the case is now moot.