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**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: PHOENIX (LAS VEGAS, NV) Date:

JUL 01 2008

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 application will be denied.

The applicant is a native and citizen of the Philippines who entered the United States with fraudulent documents on May 7, 2001. The applicant married a U.S. citizen on May 1, 2002. A Form I-130, Petition for Alien Relative (Form I-130), and Form I-485, Application for Adjustment of Status (Form I-485) were filed on June 14, 2002. The applicant also filed a Form I-601 waiver application on June 14, 2002. The applicant's Form I-485 was denied on October 27, 2003, based on her failure to establish that she was admitted into the United States, and her failure to establish eligibility for adjustment of her status to that of a lawful permanent resident under section 245(i) of the Immigration and Nationality Act provisions, 8 U.S.C. § 1255(i). The district director denied the applicant's Form I-601 on October 27, 2003, on the basis that no purpose would be served in granting a request for a waiver of her ground of inadmissibility, since the applicant was, in any event, ineligible to adjust her status to that of a U.S. lawful permanent resident.

On appeal, the applicant concedes that she is ineligible to adjust her status to that of a U.S. lawful permanent resident under section 245 of the Act. The applicant asserts, however, that her U.S. citizen husband will suffer extreme hardship if she is not allowed to remain with him in the United States. She submits a letter from her husband, a psychological report and medical history for her husband, and a congressional letter written on her behalf, to establish her extreme hardship claim.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) provides, in pertinent part, that:

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, 8 U.S.C. § 1182(i) provides in pertinent part that:

(1) The Attorney General [now Secretary, Department 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.

Section 245(a) of the Act, 8 U.S.C. § 245(a), provides in pertinent part that:

(a) The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if:

- (1) the alien makes an application for such adjustment,
- (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and
- (3) an immigrant visa is immediately available to him at the time his application is filed.

Section 245(i) of the Act provides in pertinent part that:

(1) Notwithstanding the provisions of subsections (a) . . . of this section, an alien physically present in the United States--

(A) who--

(i) entered the United States without inspection . . .

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 203(d) of--

(i) a petition for classification under section 204 that was filed with the Attorney General [Secretary] on or before April 30, 2001. . .

(C) [m]ay apply to the Attorney General [Secretary] for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General [Secretary] may accept such application only if the alien remits with such application a sum equaling \$1,000 as of the date of receipt of the application . . .

In the present matter, the district director found that the applicant was not eligible to adjust her status to that of a lawful permanent resident under section 245 of the Act because she did not meet the admission and filing date requirements contained in sections 245(a) and 245(i) of the Act. On this basis, the district director found that adjudication of the applicant's Form I-601, waiver of inadmissibility application was not necessary, as ultimately, no purpose would be served in granting the Form I-601. The AAO agrees, and finds that because the applicant is ineligible to adjust her status to that of a U.S. lawful permanent resident, no purpose would be served in the favorable exercise of discretion in adjudicating the Form I-601 appeal. The appeal will therefore be dismissed and the Form I-601 application will be denied.

ORDER: The appeal is dismissed. The application is denied.