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U.S. Citizenship and Immigration Services

H4

FILE: [redacted] Office: HONG KONG, SAR Date: JAN 11 2008

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Hong Kong, Special Administrative Region, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On June 24, 2004, the applicant applied for admission at the San Francisco, California Port of Entry. The applicant presented a passport that contained a fraudulent Filipino reentry stamp. The applicant admitted that she had obtained the fraudulent reentry stamp to conceal her previous overstay in the United States from the immigration inspector. The applicant stated that she had been admitted to the United States in June 2002 and stayed in the United States until June 2003. The record reflects that the applicant was unlawfully present in the United States from February 8, 2003, the date on which the extension of her nonimmigrant status expired, until June 14, 2003, the date on which she returned to the Philippines. The applicant was found 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 attempting to obtain entry into the United States by presenting fraudulent documentation. On June 24, 2004, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). On August 26, 2005, the applicant married her spouse, [redacted]) in the Philippines. On September 20, 2005, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which remains pending. On September 28, 2005, [redacted] filed a Petition for Alien Fiancé (Form I-129F) on behalf of the applicant, based on the pending Form I-130 and seeking her admission as a K-3 nonimmigrant. On November 7, 2005, the Form I-129F was approved. On March 15, 2006, the applicant filed the Form I-212 and an Application for Waiver of Grounds of Inadmissibility (Form I-601).

The applicant is inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), as an alien seeking admission within five years of being ordered removed under section 235(b)(1) of the Act. She seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with her U.S. citizen spouse.

The officer in charge determined that the applicant required permission to reapply for admission to the United States. The officer in charge determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Officer in Charge's Decision* dated April 28, 2006.

On appeal, counsel contends that denial of the applicant's application for permission to reapply for admission was an abuse of discretion. Counsel contends the totality of the circumstances related to the applicant's United States citizen spouse outweighs the applicant's unfavorable factors and that the officer in charge failed to consider all the facts and circumstances as a whole. *See Form I-290B,* dated May 24, 2006. The Form I-290B indicated that counsel would submit a separate brief or evidence on appeal within 30 days. On August 10, 2007, finding no brief or evidence in the record, the AAO notified counsel that she had five days in which to resubmit any documentation previously provided in support of the appeal. Counsel did not respond. The record is, therefore, considered complete.

The regulations at 22 C.F.R. § 41.81 and 8 C.F.R. 212.7(a)(1) specifically provide that K visa applicants shall file the same inadmissibility waiver as immigrant visa applicants. 8 C.F.R. § 212.7(a)(1) (66 Fed. Reg. 42587, Aug. 14, 2001). The supplemental information published in the *Federal Register* along with the amendment to 212.7(a)(1) states, in pertinent part:

> Although the new K-3/K-4 is a nonimmigrant classification, the alien spouse will still be required to meet certain State Department requirements and regulations as though they [sic] were applying for an immigrant visa. . . . Although entering as nonimmigrants, these aliens plan to ultimately stay in the United States permanently. . . . [A]pplicants for the new K-3/K-4 classification are subject to section 212(a)(9)(B) of the Act. . . . [I]n order to ensure that the K-3/K-4 nonimmigrants have the opportunity to apply for the same waiver provisions as do the K1/K-2's, 8 C.F.R. 212.7 is amended to include them.

66 Fed. Reg. 42587 (August 14, 2001). The visa and waiver application process established by regulation ensures that the Department of Homeland Security will not admit to the United States, even temporarily, an individual who is ineligible to fulfill the purpose of his or her admission. Further, the immigration process for eligible individuals is streamlined, in that, since under 8 C.F.R. § 212.7(a)(4) the waiver of inadmissibility is valid indefinitely, the alien's eventual application for adjustment of status will be adjudicated in the United States in light of the already-approved waiver of any identified inadmissibility grounds.

While the above noted regulations refer to a Form I-601, the same principle also applies to the applicant's Form I-212. The AAO, therefore, finds that the applicant must apply for waivers as an immigrant applicant pursuant to sections 212(a)(6)(C)(iii) and 212(a)(9)(A)(iii) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (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.
>
> (ii) Falsely claiming citizenship. –
>
> (I) In General –
>
> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (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.

In a separate proceeding, the officer in charge found the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and ineligible for a waiver pursuant to section 212(i) of the Act. *See Officer in Charge's Decision Form I-601,* November 8, 2007. It is noted that the officer in charge properly gave notice to the applicant that she had 33 days in which to file an appeal. *See* 8 C.F.R. §§ 103.2(a(2)(i) and 103.5a(b). The applicant did not appeal the officer in charge's decision within the 33 day period. Therefore, the denial of the Form I-601 is final.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant is subject to the provisions of section 212(a)(6)(C)(ii) of the Act, which are very specific and applicable. In that the applicant has been found ineligible for a waiver of this ground of inadmissibility, no purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. As the applicant is statutorily inadmissible to the United States, the appeal will be dismissed.

ORDER: The appeal is dismissed.