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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: SAN FRANCISCO, CALIFORNIA

Date **MAY 20 2008**

IN RE:

Applicant:



APPLICATION:

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

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 application for permission to reapply for admission after removal was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines who initially entered the United States on January 19, 1997, on a B-1 nonimmigrant visa, with authorization to remain in the United States until February 18, 1997. The applicant failed to depart the United States. On May 14, 1997, the applicant married [REDACTED] a United States citizen, in California. On June 23, 1997, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On March 19, 1998, the applicant's husband withdrew the Form I-130 based on marriage fraud. On the same day, the applicant's Form I-485 was denied based on the Form I-130 withdrawal. On March 20, 1998, a Notice to Appear (NTA) was issued against the applicant. On September 28, 1998, the applicant's daughter, [REDACTED], was born in California. On December 31, 1998, the applicant divorced [REDACTED]. On February 25, 1999, the applicant married Mr. [REDACTED] a citizen and national of the Philippines, in California. On August 9, 1999, the applicant filed an Application for Waiver of Grounds of Excludability (Form I-601). On March 3, 2000, Mr. [REDACTED] became a lawful permanent resident of the United States. On November 3, 2000, the applicant's son, [REDACTED], was born in California. On March 27, 2001, the applicant filed another Form I-485, based on the LIFE Act. On June 20, 2001, an immigration judge denied the applicant's Form I-485, Form I-601, and ordered the applicant removed to the Philippines. On July 16, 2001, the applicant filed an appeal with the Board of Immigration Appeals (BIA). On April 4, 2003, the BIA affirmed the immigration judge's decision. On the same day, a Warrant of Removal/Deportation (Form I-205) was issued. On May 28, 2003, the applicant filed an appeal and a stay of deportation with the Ninth Circuit Court of Appeals (Ninth Circuit). On June 17, 2003, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) and another Form I-601. On December 13, 2004, the Ninth Circuit denied the applicant's appeal. On May 24, 2005, the applicant's husband became a United States citizen. The applicant filed a motion for rehearing before the Ninth Circuit, which the Ninth Circuit denied on September 26, 2005. The applicant departed the United States on January 23, 2006. On August 22, 2006, the District Director denied the applicant's Form I-601 and Form I-212. The applicant is inadmissible to the United States under sections 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii), and 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). She now 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 with her United States citizen spouse and two United States citizen children.

The District Director determined that the applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for being ordered removed under section 240 or any other provision of law, and that the unfavorable factors in the applicant's case outweighed the favorable factors. The District Director denied the applicant's Form I-212 accordingly. *District Director's Decision*, dated August 22, 2006. The AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to obtain a visa by fraud or willful misrepresentation.

Counsel claims that the District Director “states that because [the applicant] has no underlying application for Adjustment of Status to follow an unapprovable Immigrant Petition that her application for waiver serves no purpose and is therefore moot. However, [the applicant] is not applying to waive her inadmissibility in order to file an as [sic] the beneficiary of any Immigrant Petition, but rather she wishes to be admitted into the U.S. under Section 203(d) of the INA, which allows for a spouse or child not otherwise entitled to immigrant status and/or the immediate issuance of a visa under subsections 203(a), (b) or (c) to be entitled to the same status and the same order of consideration provided in the respective subsection if accompanying or following to join a principal spouse or parent...[The applicant] indicated on her applications filed with the BCIS that she intended to depart the United States and then follow to join her husband.” *Appeal Brief*, pages 13-14, November 2, 2006. The AAO notes that since the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and she intends to apply for an immigrant visa, she must file her “Form I-601 at the consular office considering the visa application.” *See* 8 C.F.R. § 212.7(a)(1).¹ Additionally, since the applicant is currently residing abroad, she is required to file a Form I-601 simultaneously with the Form I-212.

8 C.F.R. § 212.2(d) states, in pertinent part:

(d) *Applicant for immigrant visa.* Except as provided in paragraph (g)(3) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. Except as provided in paragraph (g)(3) of this section, if the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, Form I-601, Application for Waiver of Grounds of Excludability, must be filed *simultaneously* with the Form I-212 with the American consul having jurisdiction over the alien’s place of residence. The consul must forward these forms to the appropriate Service office abroad with jurisdiction over the area within which the consul is located.

Emphasis added.

The AAO notes that there is no evidence that the applicant filed her Form I-212 and Form I-601 simultaneously with the American consul having jurisdiction over the alien’s place of residence; therefore, the applicant’s Form I-212 was not properly filed. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that if the applicant were applying for adjustment of status, then she would file her waiver with the District Director considering her application for adjustment of status. *See* 8 C.F.R. § 212.7(a)(ii).