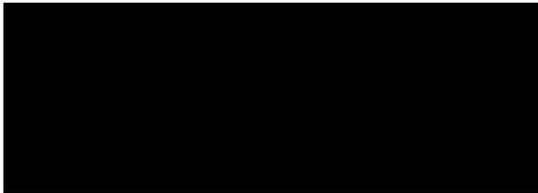


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



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DATE: JUL 21 2011

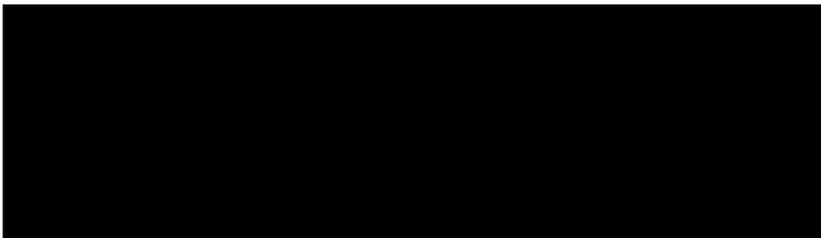
Office: MANILA

FILE: 

IN RE: Applicant: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Manila, Philippines. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the field office director will be withdrawn and the application declared moot.

The record reflects that the applicant, a native and citizen of the Philippines, 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 failing to disclose her marital status when attempting to procure a K-1 fiancée visa in 2004. 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 her U.S. citizen fiancée.

The field office director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's fiancé and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated September 30, 2008. After the applicant submitted Form I-290B, Notice of Appeal to the AAO, the field office director improperly reopened the decision and re-affirmed his decision to deny the Form I-601. *Decision of the Field Office Director*, dated February 2, 2009. In the instant case, counsel for the applicant filed the Form I-290B, Notice of Appeal, and indicated under Part 2 that he was filing an appeal. See *Form I-290B, Notice of Appeal or Motion*, dated November 3, 2008. The field office director had the authority to treat the appeal as a motion to reopen or reconsider only for the purpose of taking favorable action on the motion, and he should have promptly forwarded the appeal to the AAO after deciding favorable action was not warranted.<sup>1</sup> As the field office director's decision reopening the matter and re-affirming the denial of the Form I-601 was improperly issued, it will be withdrawn.

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

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<sup>1</sup> Pursuant to section 103.3(a)(2) of the Code of Federal Regulations,

- (iii) *Favorable action instead of forwarding appeal to AAU.* The reviewing official shall decide whether or not favorable action is warranted. Within 45 days of receipt of the appeal, the reviewing official may treat the appeal as a motion to reopen or reconsider and take favorable action. However, that official is not precluded from reopening a proceeding or reconsidering a decision on his or her own motion...in order to make a new decision favorable to the affected party.....
- (iv) *Forwarding appeal to AAU.* If the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of proceeding to the AAU in Washington, DC.

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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 immigrant 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...

The field office director found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a nonimmigrant visa by providing false information, specifically, her marital status. The applicant asserts that although it is her fault that she failed to disclose her marriage to [REDACTED] when applying for a K-1 visa in 2004, she contends that she did not know that the marriage to [REDACTED] was ever valid and thus, her failure to disclose her first marriage was not willfully made. As the applicant details,

I was previously denied a K-1 visa because during my interview with the US Consul, I insisted that I was not married although our National Statistics Office has a record of my marriage with [REDACTED]. While it is true that I was married to [REDACTED], that marriage was actually bigamous and therefore void from the beginning since [REDACTED] deceitfully married me while he had a valid subsisting marriage. It was for that reason that I insisted during the interview that I was not married. Unfortunately, I did not realize then that I needed to secure first a judicial declaration of the nullity of my marriage before I can prove to the US Embassy that my marriage to [REDACTED] was void from the beginning and that my civil status has remained single notwithstanding the said marriage. I have, however, already secured that judicial confirmation on June 10, 2005.

*Letter from [REDACTED], dated February 7, 2007.* The applicant also stated in a supplement to Form I-601 submitted in December 2004 that she did not disclose her first marriage because she did not believe that the marriage was ever valid because of [REDACTED] bigamy.

In an additional statement, the applicant states that she was advised by lawyers that her marriage to [REDACTED] being considered bigamous, was null and void and non-existent in the eyes of Philippines law and her failure to disclose her marriage to [REDACTED] was done in good faith and without any motive to deceive. *Form I-601 Supplemental Questionnaire, dated April 10, 2008.*

In support, an Entry of Final Judgment for Declaration of Nullity of Marriage was submitted. *Entry of Final Judgment, Republic of the Philippines Regional Trial Court of Cebu*, dated June 10, 2005. In addition, the record establishes that it was only two months after the marriage to ██████████, in November 1997, that the applicant learned that he was already married and had three children. The knowledge led to their immediate separation. The Court noted that the marriage between the applicant and ██████████ was bigamous and such marriage "is void from the beginning under Article 35(4) of the Family Code..." *Decision, Republic of the Philippines Regional Trial Court of Cebu*, dated June 10, 2005.

The Department of State Foreign Affairs Manual states, in pertinent part, that in order to find an alien ineligible under section 212(a)(6)(C)(i) of the Act, it must be determined that:

- (1) There has been a misrepresentation made by the applicant;
- (2) The misrepresentation was willfully made; and
- (3) The fact misrepresented is material; or
- (4) The alien uses fraud to procure a visa or other documentation to receive a benefit....

*DOS Foreign Affairs Manual*, § 40.63 N2.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. The AAO finds that the applicant's failure to disclose her previous marriage, which was null and void from its inception due to the bigamous nature of the marriage, was not a willful misrepresentation. The applicant states that she believed that her marriage was never valid and erroneously believed that she did not need a judicial decree. Nothing in the record indicates that the applicant was aware of this requirement prior to her 2004 visa interview and willfully chose to ignore it for the purpose of obtaining an immigration benefit.<sup>2</sup> Days after her nonimmigrant visa interview in November 2004, she submitted a petition to declare the nullity of marriage. *Petition for Declaration of Nullity of Marriage*, dated November 25, 2004. The petition was granted by the court in June 2005.

Thus, the AAO finds that the field office director erred in concluding that the applicant willfully misrepresented her marital status and was therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the waiver application is unnecessary and the issue of whether the applicant

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<sup>2</sup> The field office director states in the second decision reaffirming the denial of Form I-601 that even if a marriage is null and void, the parties are not allowed to assume its nullity and must obtain a judicial declaration of such fact. The AAO notes that the Family Code of the Philippines, referenced by the Field Office Director, became effective in 1987 and subsequent court decisions interpreted Article 40 of the Family Code to require a judicial decree of nullity even in cases of bigamy. However, as noted by the Field Office Director, prior to enactment of the Family Code and subsequent decisions interpreting Article 40 of the code, a judicial decree was not necessary under Philippine law when a marriage was null and void because of bigamy, and the applicant might have reasonably believed in 1997 that she needed no such decree.

established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed. Accordingly, the appeal will be dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared moot.

**ORDER:** The appeal is dismissed, the prior decision of the field office director is withdrawn and the application for a waiver of inadmissibility is declared moot.