

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



tt5

DATE: **APR 05 2012** OFFICE: LOS ANGELES, CA FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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.

Thank you,

*Michael Shumway*

f/ Perry Rhew, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be dismissed as moot.

The applicant, a native and citizen of the Philippines was found inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresentation due to her unauthorized employment within weeks after her entry into the United States on a tourist visa. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) based on extreme hardship to her spouse.

In a decision dated November 16, 2009, the director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant states that the applicant is not inadmissible under INA § 212(a)(6)(C)(i), and, in the alternative, that she has demonstrated that her U.S. citizen husband would suffer extreme hardship if she is not admitted as a lawful permanent resident.

In support of the waiver application, the record includes, but is not limited to, a brief from counsel for the applicant, a sworn declaration for the applicant, biographical information for the applicant and her spouse, medical documentation for the applicant's sister, evidence of packages sent to the applicant's mother in the Philippines, evidence of deposits in the applicant's mother's bank account, a letter from the applicant's spouse, documentation concerning the applicant's marriage, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under INA § 212(a)(6)(C), which 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.

...

The Department of State (DOS) Foreign Affairs Manual (FAM) states:

[I]n determining whether a misrepresentation has been made, some of the most difficult questions arise from cases involving aliens in the United States who conduct themselves in a manner inconsistent with representations they made to the

consular officers concerning their intentions at the time of visa application. Such cases occur most frequently with respect to aliens who, after having obtained visas as nonimmigrants, either: (1) Apply for adjustment of status to permanent resident; or (2) Fail to maintain their nonimmigrant status (for example, by engaging in employment without authorization by DHS).

9 FAM § 40.63 N4.7(a)(1).

DOS developed the 30/60-day rule which applies when “an alien states on his or her application for a B-2 visa, or informs an immigration officer at the port of entry, that the purpose of his or her visit is tourism, or to visit relatives, etc., and then violates such status by ... [a]ctively seeking unauthorized employment and, subsequently, becomes engaged in such employment;” 9 FAM § 40.63 N4.7-1(1). Under this rule, “[i]f an alien violates his or her nonimmigrant status in a manner described in 9 FAM 40.63 N4.7-1 within 30 days of entry, you may presume that the applicant misrepresented his or her intention in seeking a visa or entry.” 9 FAM § 40.63 N4.7-2. Where the presumption of misrepresentation is made based on the applicant’s conduct within 30 days after her entry, the “burden of proof falls on the alien to establish that his or her true intent was to visit, tour, etc.” 9 FAM § 40.63 N4.8. If the applicant does not meet this burden of proof, he or she may be found inadmissible under INA § 212(a)(6)(C). Although USCIS is not bound by the Foreign Affairs Manual, in the absence of a conflicting USCIS or Department of Homeland Security policy and in the interest of consistency, the AAO has long applied the 30/60-day rule.

In this case, the applicant reported on her Form G-325A that she began to work as a bookkeeper in February 2005, within a “few weeks,” and certainly 30 days, of her entry on February 13, 2005 as a B-2 visitor for pleasure. There is no evidence that she actively sought employment in the United States other than the aforementioned bookkeeper position. Unauthorized employment is violative conduct under the 30/60 day rule and, as a result, the Field Office Director determined that the applicant obtained admission to the United States through a material misrepresentation when she stated to the immigration officer at the Los Angeles Port of Entry that she intended to enter the United States to visit her cousin, when the facts suggest that she intended to engage in unauthorized employment in the United States due to her having engaged in such employment within 30 days of admission. Where a material misrepresentation is presumed due to the applicant’s conduct within 30 days of entering the United States, the applicant must be provided the opportunity to rebut the presumption. 9 FAM § 40.63 N4.8.

The applicant has provided a sworn declaration indicating that although she intended to visit her cousin and “enjoy some sight-seeing,” when she entered the United States on February 13, 2005, she learned shortly after entry that her sister was diagnosed with breast cancer. The applicant states that this information led her to begin working as a bookkeeper for her cousin so that she could earn money to help support her mother in the Philippines, a burden that had previously fallen on her sister. In support of this statement, the applicant has provided documentary evidence of her sister’s diagnosis on February 15, 2005, her subsequent admission to the hospital on April 3, 2005, and her death on September 14, 2007. The applicant also submitted evidence that she has sent support to her mother in the Philippines. The AAO finds that the applicant has submitted

sufficient evidence to rebut the presumption that her intention at the time of admission as a nonimmigrant visitor for pleasure was to engage in employment in the United States.

The AAO finds that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and withdraws the director's decision. The Form I-601 is moot. Having found that a waiver is unnecessary, no purpose would be served in discussing whether the applicant has established extreme hardship to her U.S. citizen husband under section 212(i) of the Act. The appeal will be dismissed as the applicant is not inadmissible and the waiver application is moot.

**ORDER:** The applicant's waiver application is declared moot and the appeal is dismissed. The matter will be returned to the director for continued processing of the applicant's Form I-485 adjustment application.