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



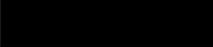
**U.S. Citizenship
and Immigration
Services**



H5

DATE: APR 20 2012

OFFICE: SANTA ANA

FILE: 

IN RE: 

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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the underlying application is moot.

The record reflects that the applicant is a native and citizen of the Philippines who entered the United States with a B2 visa on February 6, 2009. The applicant's spouse filed a Form I-130, Petition for Alien Relative, on the applicant's behalf on March 30, 2009. The Field Office Director found the applicant to have misrepresented her intent to enter the United States as a visitor for pleasure rather than an intending immigrant. The Field Office Director found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry to the United States by fraud or willful misrepresentation. The applicant is a beneficiary of an approved Petition for Alien Relative and seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship to the applicant's spouse and denied the application accordingly. *See Decision of the Field Office Director* dated November 17, 2009.

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

- (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 applicant maintains that she was a visitor for pleasure when she entered the United States on a B2 visa on February 6, 2009, and decided to remain in the United States with her spouse after her arrival in the United States. It is noted that the applicant married her U.S. citizen spouse on [REDACTED] 2007. The applicant states that her husband did not submit a Form I-130 on her behalf before March 30, 2009 due to her stable employment in the Philippines and her husband's lack of a stable employment because of the recession in the United States. The applicant states that she and her husband only discussed processing an immigrant petition on her behalf after her arrival in the United States, due to her husband's acquisition of stable employment. The Form I-864 and tax records filed by the applicant's spouse support the applicant's assertions concerning her husband's employment. Specifically, tax records for the years 2006 and 2007 indicate a relatively lower income that supports the applicant's assertions that her husband worked on and off. The tax records for the year 2008 also indicate that the applicant's spouse received unemployment benefits in that year. It is noted that the applicant's spouse submitted a Form G-325A indicating new employment with [REDACTED] beginning in January 2009. It is further noted that the Form G-325A, Form I-864, and the applicant's spouse's tax records for the years 2006 to 2008 were all submitted prior to the issuance of a notice of rescission finding misrepresentation of intent on the part of the applicant.

The applicant states that she was forthright in disclosing her intention to visit her U.S. citizen husband in the United States throughout the nonimmigrant visa process. The nonimmigrant visa information pertaining to the applicant supports the applicant's assertions. Specifically, prior to the issuance of a nonimmigrant visa, a consular officer noted that the applicant wished to enter the United States to visit her U.S. citizen spouse in California. Based upon the evidence in the record, including the applicant's spouse's Form G-325A, the Form I-864 and tax records submitted on the applicant's behalf prior to a misrepresentation finding, letters corroborating the applicant's stable employment in the Philippines, and the applicant's nonimmigrant visa information details, the applicant has established that she did not misrepresent her intent in procuring a nonimmigrant visa and admission to the United States. Accordingly, it has been determined that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, as she did not procure entry to the United States by fraud or willful misrepresentation.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed because the applicant is not inadmissible under section 212(a)(6)(C)(i) and an application for a waiver of inadmissibility is therefore not required.

ORDER: The appeal is dismissed, the prior decision of the Field Office Director is withdrawn and the application for waiver of inadmissibility is declared moot. The Field Office Director shall continue processing the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status.