



U.S. Citizenship
and Immigration
Services

[REDACTED]

HS

DATE: DEC 21 2012 Office: SAN FRANCISCO, CA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office 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 was found 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 admission into the country through willful misrepresentation of a material fact. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). 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 spouse and daughter.

In her decision of July 22, 2010, the Field Office Director concluded that the applicant had failed to establish that her spouse would experience extreme hardship if she were denied admission into the United States. Accordingly, the Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied.

On appeal, counsel asserts that the balancing of equities should favor the applicant as the medical condition of her spouse, as well as his dependence on the applicant, should have been considered extreme hardship. Counsel also asserts that it was an abuse of discretion for the director to find that relocation would not result in extreme hardship for the applicants' spouse.

The record includes, but is not limited to: counsel's brief; statements from the applicant and her former and current spouses; medical documents regarding the applicant's spouse; the applicant's spouse's banking statements and telephone, credit card and insurance billing statements; a Form I-864, Affidavit of Support; letters of support and cancelled checks from a customer of the applicant's spouse; the applicant's spouse's federal income tax returns for 2007 and 2008; and documentation from the Internal Revenue Service regarding the applicant's spouse's 2008 federal income tax return. The entire record was reviewed and all relevant evidence considered in reaching this decision.

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

- (i) In general.-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 record reflects that the applicant entered the United States on November 14, 1997 using a B-2 nonimmigrant visa. In submitting the Form I-601, dated January 7, 2010, the applicant indicated that she had entered the United States on November 14, 1997 "with the intention of staying in the US if not permanently [then] certainly beyond the time given me in my visa." Based upon the applicant's admission, the AAO finds her to be inadmissible pursuant to section

212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i), for having obtained admission to the United States through fraud or the willful misrepresentation of a material fact.

Beyond the decision of the director, the AAO also finds the record to demonstrate that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(E)(i) of the Act, 8 USC § 1182(a)(6)(E)(i).¹

Section 212(a)(6)(E)(i) of the Act, which states:

(i) In general – Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

The AAO notes that the record reflects that, on August 30, 1997, the applicant entered the United States as a tourist, accompanied by a [REDACTED] who had been issued a tourist visa as her daughter. However, [REDACTED] was not at that time the applicant's daughter. In her statement of January 22, 2010, the applicant indicates that while she was in the process of adopting [REDACTED] the adoption had not been finalized on July 23, 1997, the date that she obtained Rachel's visitor's visa. As a result, the applicant states, she obtained a Philippine birth certificate identifying her as [REDACTED] biological mother to establish their relationship for visa purposes. The AAO notes that the applicant's adoption of [REDACTED] had also not been finalized at the time she and [REDACTED] entered the United States as mother and daughter on August 30, 1997.² Accordingly, the AAO finds the applicant's efforts to effect the nonimmigrant admission of [REDACTED] to the United States on August 30, 1997 to constitute alien smuggling and to bar her admission under section 212(a)(6)(E) of the Act.³

Section 212(a)(6)(E)(ii) of the Act provides an exception to a section 212(a)(6)(E)(i) inadmissibility as follows:

Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the all of the grounds for denial are not identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

² The record contains a Certificate of Finality from the Regional Trial Court of the Philippines granting the adoption of [REDACTED] to the applicant and her former spouse on November 11, 1997.

³ The AAO notes that the record contains a December 11, 1998 memorandum from the United States Embassy in Manila, which indicates that the applicant is inadmissible under section 212(a)(6)(E) of the Act. The record also includes a May 13, 1999 denial of the applicant's initial Form I-485 in which the District Director, Los Angeles, California found the applicant to be inadmissible under section 212(a)(6)(E) of the Act.

present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988 has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

A waiver of a section 212(a)(6)(E)(i) inadmissibility is also available under section 212(d)(11), which states:

The Attorney General [Secretary of Homeland Security] may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) of this section in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

As noted above, an exception or waiver of a section 212(a)(6)(E)(i) inadmissibility is available to individuals whose smuggling violations involved encouraging, inducing, assisting, abetting or aiding a spouse, parent, or son or daughter to enter the United States unlawfully. In the present case, the minor whom the applicant assisted in entering the United States on August 30, 1997 was not then her daughter, despite the fact that she had begun the adoption process. Therefore, the applicant is not eligible for consideration under either section 212(a)(6)(E)(ii) or section 212(d)(11) of the Act. Accordingly, she is permanently barred from admission to the United States by section 212(a)(6)(E)(i) of the Act.

Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she is eligible for a waiver of inadmissibility under section 212(i) of the Act in relation to her section 212(a)(6)(C)(i) inadmissibility. Therefore, the appeal will be dismissed.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The appeal is dismissed.