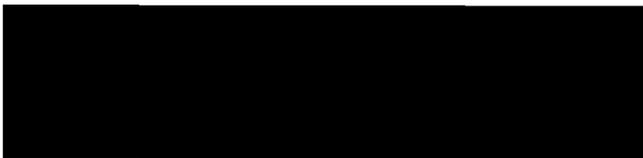


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invasion of personal privacy

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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**



H5

DATE **MAR 26 2012** OFFICE: LOS ANGELES, CALIFORNIA

File:



IN RE:

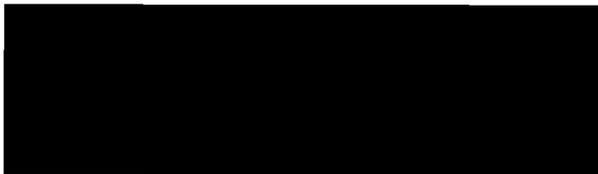
Applicant:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 appeal will be dismissed as moot. The adjustment of status application will be returned to the Field Office Director for continued processing.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated August 13, 2009.

On appeal, counsel asserts extreme hardship of a mental/emotional, economic, and familial nature. See *Counsel's Appeal Brief*, dated October 6, 2009.

The record includes, but is not limited to: Form I-290B and counsel's brief; Form I-601 and denial letter; counsel's letter; hardship letter; two psychiatric assessments; character reference letters; medical and insurance records; employment letter, wage and tax records; residential lease and billing statements; records related to the applicant's children; Philippines country information printouts; divorce, marriage and birth records; records concerning the applicant's inadmissibility; Form I-140 and denial letter; and Forms I-485 and I-130. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States in or about November 1997 with her former spouse, [REDACTED] whom she divorced in Nevada in September 1999. The applicant returned to the Philippines where she obtained a new passport and U.S. visa. On her visa application, the applicant used her married name and indicated that she was married, when in fact she was recently divorced. The applicant entered the United States on March 26, 2000, as a B-2 visitor. The Field Office Director found the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i).<sup>1</sup>

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

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<sup>1</sup> While inadmissibility is not specifically contested on appeal, the AAO notes that in [REDACTED] *Psychiatric Assessment Report*, dated April 3, 2009, [REDACTED] relays an interview he conducted with the applicant in which she addressed the subject. Therein the applicant stated that she filed her visa application as married because "she was on Philippine soil at the time and there is no divorce in the Philippines." [REDACTED] asserts that the applicant's spouse said they "tried to explain to immigration officials that his wife listed 'married' because there is no divorce in the Philippines." *Psychiatric Assessment Report*, dated August 28, 2009.

- (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.

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are “material” is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service’s (now United States Citizenship and Immigration Services) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in proper determination that he or she be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).

The record reflects that the applicant used her married name and indicated that she was married on a nonimmigrant visa application when she was, in fact, recently divorced. However, had the applicant indicated on the visa application that she was divorced, this would not have been a proper basis for denying her visa application. Thus, the applicant was not “excludable on the true facts.” Nor does the record reflect that the applicant’s misrepresentation regarding her marital status shut off a line of inquiry which may properly resulted in a denial of her visa application.

Therefore, based on the record as currently constituted, the AAO finds that the applicant did not misrepresent or conceal a material fact and is not inadmissible under section 212(a)(6)(C)(i) of the Act. Accordingly, the applicant is not inadmissible and the Field Office Director's findings concerning misrepresentation under section 212(a)(6)(C) of the Act are withdrawn. The waiver application filed pursuant to section 212(i) of the Act is therefore moot.

Because the AAO finds that the applicant is not inadmissible, she is not required to file for a waiver of inadmissibility and the appeal will be dismissed as moot. The applicant’s file will be returned to the Field Office Director for adjudication of the application for adjustment of status and to continue processing consistent with this decision.

**ORDER:** The applicant's appeal is dismissed as the waiver application is moot. The applicant's application for adjustment of status will be returned to the Field Office Director for adjudication and further action consistent with this decision.