



U.S. Citizenship
and Immigration
Services

465

[REDACTED]

DATE: **OCT 24 2012** OFFICE: SACRAMENTO, CA

FILE: [REDACTED]
[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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Sacramento, 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 has resided in the United States since September 5, 1987, when he presented a passport and a nonimmigrant visa which did not reflect his identity to procure admission. He 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 to the United States through fraud or misrepresentation. The applicant is the parent of U.S. Citizens and is the beneficiary of an approved Petition for Alien Relative filed by his U.S. Citizen son. 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 his U.S. Citizen children.

The Field Office Director concluded that the applicant failed to establish the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated February 15, 2011.

On appeal, counsel for the applicant contends that the applicant's children would be psychologically harmed upon separation from the applicant. Counsel additionally asserts that the applicant's children would experience extreme hardship upon relocation to the Philippines.

The record includes, but is not limited to, statements from the applicant and his children, educational and financial records, a psychological evaluation, evidence of birth, marriage, residence, and citizenship, other applications and petitions filed on behalf of the applicant, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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 [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien 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 [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.

In the present case, the record reflects that on September 5, 1987 the applicant presented a passport to immigration officials under the name of [REDACTED] to procure admission into the United States. The applicant admits in a declaration that he had previously applied for a nonimmigrant visa in his own name but his application was denied. He adds that he obtained the passport and a visa from a travel agency. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant indicates that his U.S. Citizen son is his qualifying relative for purposes of this waiver. The AAO notes that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Only hardship to an applicant's U.S. Citizen or lawful permanent resident parent or spouse can be considered in an analysis of extreme hardship for a waiver of inadmissibility under section 212(i) of the Act. In the present case, the applicant has not shown that he has a qualifying relative for a waiver. Without a qualifying relative, the AAO cannot find that the applicant has demonstrated the existence of extreme hardship to a qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether he merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.