



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

(b)(6)

DATE: **FEB 12 2014**

Office: HONOLULU

IN RE: Applicant: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Honolulu, Hawaii, denied the waiver application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision affirmed.

The applicant is a native and a 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 procuring or attempting to procure an immigration benefit by fraud or misrepresentation. The applicant contests the inadmissibility finding, but alternatively seeks a waiver of inadmissibility in order to reside in the United States as the beneficiary of the Petition for Alien Relative (Form I-130) filed by her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, July 24, 2012. On appeal, the AAO also concluded the record evidence did not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. *Decision of the AAO*, July 12, 2013.

On motion, counsel for the applicant asserts that both the applicant's husband and daughter are qualifying relatives, the AAO abused its authority in finding no extreme hardship had been shown where the applicant's husband is in the military and where the applicant has no criminal history, and there was no fraud. Counsel states that all relevant documents have been submitted. *See Form I-290B, Notice of Appeal or Motion*, August 10, 2013. The record includes the supporting documents submitted with the waiver application and the appeal of the waiver denial. The entire record was reviewed and considered in rendering this decision.

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

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.

Immigration records show that the applicant used a single entry visa to enter the country in December 2001 to attend a youth rally. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) that she signed on May 3, 2002 based on a claimed March 22, 2002 marriage to a U.S. citizen other than her current petitioner. This application was denied for abandonment in 2004. Meanwhile, the record reflects that she married the petitioner in December 2003, and the application denial came to light in 2005-2006 during processing of a Form I-130 filed by this petitioner for the applicant. She admitted having signed the adjustment application and supporting documentation listing another man as her spouse, but later recanted her admission of fraud. These facts are not in dispute. Further, the record reflects that she paid someone to help her obtain permanent residence, but contains no indication of her reasons for believing herself eligible for this immigration benefit.

Regarding counsel's assertion that the applicant did not commit fraud, the AAO previously concluded that evidence showing the absence of the marriage on which her adjustment application was based did not establish her lack of participation in the fraudulent filing. The AAO thus found her inadmissible for seeking to obtain permanent residence by falsely claiming to be married to a U.S. citizen. *See Decision of the AAO*, July 12, 2013. As the AAO fully considered this issue on appeal and where counsel provides no additional evidence or information in support of the claim that the applicant was unaware of the fraudulent adjustment application, we affirm our finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Because the applicant sought to procure an immigration benefit by fraud or misrepresentation, she must establish eligibility for a waiver of this inadmissibility under section 212(i) of the Act.

Section 212(i)(1) provides:

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 [...].” [emphasis added].

A waiver of inadmissibility under section 212(i)(1) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Although counsel asserts that the applicant's lawful permanent resident daughter is a qualifying relative, hardship to the applicant's daughter can be considered only insofar as it results in hardship to a qualifying relative.

The AAO previously determined on appeal that the applicant's U.S. citizen husband is the only qualifying relative in this case. Noting that hardship to the applicant or her child can be considered only insofar as it results in hardship to a qualifying relative, we also concluded the record failed to establish that the claimed hardship to the applicant's daughter would result in extreme hardship to the qualifying relative. While the applicant's husband asserts his wife's departure would require him to move back to Hawaii to care for his stepdaughter, we note there is no showing that she is unable to move to San Diego or relocate with her mother to the Philippines.

In dismissing the applicant's appeal, the AAO concluded that, despite establishing her husband would experience extreme hardship if he relocated overseas to remain with his wife, the applicant had not demonstrated extreme hardship from separation. On motion counsel submits no new evidence and states only that the applicant's spouse is in the military and that the AAO abused its authority in finding extreme hardship to a qualifying relative had not been established.

The AAO finds that the cumulative effect of the hardships the applicant's husband will experience due to the applicant's inadmissibility does not rise to the level of extreme. The evidence shows that the applicant remained in Honolulu when her husband left for his posting rather than accompany him

to San Diego, and she offers no evidence that this living arrangement was other than a personal choice. The record is silent about the status of their home ownership, as well as regarding the applicant's reasons for remaining apart from her husband for over four years. There is no indication that his wife's absence currently imposes economic hardship on the qualifying relative or will do so after she departs to the Philippines. Nothing on record demonstrates that the applicant's husband is presently experiencing economic problems or that his wife's inability to remain here would make him unable to meet his financial obligations, and documentation establishes that he contributed nearly 75% of family income. The AAO concludes based on the evidence provided that, were her husband to remain in the United States without the applicant due to her inadmissibility, he would not suffer hardship beyond those problems normally associated with family separation.

The motion fails to establish that the dismissal of the applicant's appeal was incorrect as a matter of law or policy. When considered in its totality, the documentation on record reflects the applicant has not established that a qualifying relative will suffer extreme hardship if the applicant is unable to live in the United States. While recognizing that the applicant's husband will endure hardship as a result of the applicant's inability to immigrate, the AAO notes that his situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to her husband as required under the Act.

In proceedings for application for waiver of grounds of inadmissibility, 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 and, accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The prior decision of the AAO is affirmed.