



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

AA



FILE: [Redacted]

Office: San Francisco

Date:

AUG 22 2000

IN RE: Applicant: [Redacted]

APPLICATION:

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

IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under § 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 a nonimmigrant visa and admission into the United States by fraud or willful misrepresentation in 1985. The applicant married a native of the Philippines and naturalized U.S. citizen in March 1992 in Reno, Nevada, and is the beneficiary of an approved petition for alien relative. The applicant seeks the above waiver in order to remain in the United States and reside with his spouse and children. Both of the applicant's parents are naturalized U.S. citizens and they reside in California.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel states that the applicant had already obtained his own nonimmigrant visa and the alleged misrepresentation does not apply to him.

The record reflects that the applicant obtained a fraudulent Philippine marriage contract and presented it to a consular officer on two separate occasions in order to obtain nonimmigrant visitor visas for his companion and his three children.

The Department of State, Foreign Affairs Manual, 9 FAM 40.63 n.4., provides that the misrepresentation must be made in the alien's own visa application. Misrepresentations made in connection with another person's visa application are not within the scope of the ground of inadmissibility under § 212(a)(6)(C)(i) of the Act.

The record fails to indicate that the applicant used any fraudulent documents to procure his own nonimmigrant visa.

9 FAM 40.63 n.4.8., provides that where an alien seeks a tourist visa claiming a desire only to visit the United States, but who begins working more than 60 days after the visa issuance or entry into the United States, the Visa Office will not entertain a recommendation that the alien be found ineligible on the basis of an alleged misrepresentation.

The record reflects that the applicant was admitted to the United States on June 26, 1985 as a nonimmigrant visitor. He has remained in the United States since that date and he entered into unauthorized employment in June 1987 more than 60 days after his admission to the United States.

9 FAM 41.11 N.1.3., provides if an alien wishes to enter the United States in order to remain there permanently, the consular officer

may not suggest that the alien apply for a nonimmigrant visa and then seek to adjustment of status. An alien intending to remain in the United States until it is possible to adjust to permanent resident status may not be considered by the consular officer to have established that the purpose of entry falls within one of the provisions for nonimmigrant classification.

The record reflects that the applicant did not consider the prospect of remaining in the United States until after his arrival in 1985.

Following Department of State guidelines, the Associate Commissioner is unable to concur with a finding of fraud or misrepresentation in this matter. Therefore, the district director's decision will be withdrawn and the application will be declared moot.

ORDER: The appeal is sustained. The district director's decision is withdrawn and the application is declared moot.