

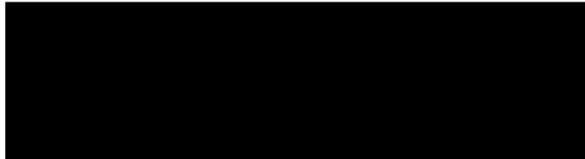


U.S. Department of Justice

Immigration and Naturalization Service

H12

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



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 district director's decision will be withdrawn, and the application will be declared moot.

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 attempted to procure a benefit by fraud or willful misrepresentation on a legalization application. The applicant married a United States citizen in February 1997 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.

The district director concluded that the applicant had established that extreme hardship would be imposed on a qualifying relative but concluded that the applicant did not merit relief as a matter of discretion and denied the application accordingly.

On appeal, counsel states that the decision is unduly harsh, especially when the Service acknowledged that the applicant's spouse would suffer extreme hardship if separated from his wife.

On appeal, even though the district director had concluded that extreme hardship was present, counsel discusses at great length the various hardships that would befall the applicant's spouse if they returned to the Philippines together or if she returned alone. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996). Counsel submitted additional various documents in support of the appeal.

The record reflects that the applicant was admitted to the United States on April 12, 1989 as a nonimmigrant visitor with authorization to remain until October 21, 1989. There is no evidence in the record to indicate that she ever applied for or was granted an extension of temporary stay. The record reflects that the applicant was found to be inadmissible because she misrepresented her periods of residence in the United States on her legalization application, Form I-687.

Section 245A(c)(5), 8 U.S.C. 1255c(c)(5). CONFIDENTIALITY OF INFORMATION.-

(A) IN GENERAL.-Except as provided in this paragraph, neither the Attorney general, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-

(i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for the enforcement of paragraph (6), or for

the preparation of reports to Congress under § 404 of the Immigration Reform and Control Act of 1986;...

(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.- Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

8 C.F.R. 245a.2(t)(3) provides that no information furnished pursuant to an application for legalization under this section shall be used for any purpose except: (i) To make a determination on the (legalization) application; or, (ii) for the enforcement of the provisions encompassed in § 245A(c)(6) of the Act, except as provided in paragraph (t)(4) of this section...(5) Information obtained in a granted legalization application and contained in the applicant's file is subject to subsequent review in reference to future benefits applied for (including petitions for naturalization and permanent resident status for relatives. The applicant was never the beneficiary of a granted legalization application. (Emphasis added.)

The applicant in this matter is applying for Adjustment of Status to that of Person Admitted for Permanent Residence under § 245 of the Act, 8 U.S.C. 1255. The present matter does not concern itself with an application for legalization, nor for Adjustment of Status under § 245A of the Act, nor does it concern itself with the enforcement of a penalty in accordance with title 18 United States Code. Therefore, it is concluded that the information provided by the applicant to a Service officer, regarding a fact or statement contained in her legalization application, is confidential and cannot be used in any other proceeding.

The confidentiality clause contained in the statute at § 245A(c)(5) of the Act precludes the Service from using a fraudulent or misleading fact or statement contained on her legalization application to find her inadmissible under § 212(a)(6)(C) of the Act unless the use of that information is in regards to a proceedings under § 245A of the Act, or prosecution under title 18 United States Code. The district director's decision will be withdrawn, and the waiver application will be declared moot. The matter will be remanded to the acting district director for further processing.

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