

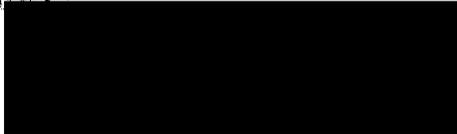


U.S. Department of Justice

Immigration and Naturalization Service

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Public Conv



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

FILE:

Office: Manila

Date: JAN 24 2000

IN RE: Applicant:

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

**DISCUSSION:** The waiver application was denied by the Acting Officer in Charge, Manila, Philippines, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be granted and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States by a consular officer 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 obtain admission to the United States by fraud or misrepresentation. The applicant married a United States citizen on May 25, 1996 in the Philippines and is the beneficiary of an approved immediate relative visa petition. The applicant seeks the above waiver in order to return to the United States and reside with her spouse.

The officer in charge determined that the applicant had failed to establish that extreme hardship would be imposed upon her spouse and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

The record reflects that the applicant was intercepted at Los Angeles International Airport on April 3, 1993 while applying for transit without visa to Mexico. The applicant admitted to the fact that her real intention was to request transit without visa to Mexico and then abscond from security and then look for a job in the United States. The applicant withdrew her application for admission.

On appeal, counsel discusses the history of [REDACTED] his prior marriage, his employment for the U.S. Postal Service for more than 18 years, his present marriage to the applicant in the Philippines, his siblings who are U.S. citizens, the expense and difficulty in being separated, and the dim prospects for his employment in the Philippines should he decide to join his wife there.

On motion, counsel submits a family impact study, a copy of each page of Mr. [REDACTED] passport, evidence of [REDACTED] back injury and his need to take time off from work.

Counsel states that [REDACTED] has lived in the United States for almost 25 years. With the exception of his elderly mother in the Philippines, all of his siblings are U.S. citizens residing in this country. In addition, [REDACTED] has 2 U.S. citizen sons from a prior marriage living in this country; therefore, he has extremely strong family ties to those U.S. citizens in this country. Counsel states that [REDACTED] has been employed in this country for the past 18 years and would not likely be able to find employment in the Philippines. Therefore, he would suffer extreme financial hardship if he had to return to the Philippines. Counsel asserts that [REDACTED] has been suffering from [REDACTED]

recurring back pain that has prevented him for working at times.

Section 212(a)(6)(C)(i) of the Act provides that:

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 that:

(1) The Attorney General may, in the discretion of the Attorney General, waive application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 Attorney General 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a § 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Soriano, Interim Decision 3289 (BIA, A.G. 1996).

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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, Interim Decision 3272 (BIA 1996).

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established

extreme hardship pursuant to § 212(i) of the Act include, but are not limited to, the following: the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

After reviewing the amendments to the Act and to other statutes regarding fraud and misrepresentation from 1948 to the present time, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, and the re-inclusion of the perpetual bar, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

On motion counsel submits copies of telephone bills, money transfers, [REDACTED] passport, a family impact study, and accident slips.

The family impact study alleges that [REDACTED] is at risk for further emotional complications pending the decision on his wife's application. The report reflects that the emotional turmoil, social shame, material drain of resources and physical health seem to comprise an extreme hardship to [REDACTED].

The record contains a physicians certificate dated November 13, 1998 which indicates that [REDACTED] has recovered sufficiently from his back problem to return to regular work, but he is to wear a low back support while working.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether or not she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed.

**ORDER:** The order dismissing the appeal is affirmed.