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U.S. Department of Justice
Immigration and Naturalization Service

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

FEB 28 2003

File: [Redacted] Office: NEWARK, NEW JERSEY Date:

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)

IN BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Associate Commissioner for Examinations on appeal. The decision of the district director will be withdrawn and the application will be denied de novo.

The applicant is a native and 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 having procured admission into the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved employment-based petition and seeks the above waiver in order to remain in the United States and adjust his status to that of a lawful permanent resident.

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 as a matter of discretion.

On appeal, the applicant and his spouse submit letters stating that they have two minor children who need the care of their parents and the stability of a home. They indicate that the family relies upon the applicant for his paternal role as well as financial support. They further states that they want their family to stay together and their children to have a normal and healthy life.

The record reflects that the applicant procured admission into the United States on May 10, 1996 by presenting a photo-substituted U.S. passport belonging to another person.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

* * *

(C) MISREPRESENTATION.-

(i) IN GENERAL.-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 states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 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 section 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).

The applicant submitted his waiver application on March 7, 2001. At that time, the applicant was married, however his spouse was not yet a lawful permanent resident of the United States and his application was based on his being the father of a United States citizen daughter. On September 12, 2002, the district director notified the applicant of the Service's intention to deny his waiver application because the applicant had failed to establish that he had a qualifying relative - a spouse or parent who was a lawful permanent resident or citizen of the United States, as required by statute.

In response to the district director's notice of intent to deny the applicant's waiver request, the applicant submitted evidence that his spouse had obtained lawful permanent residence on March 19, 2002. The district director then erroneously considered the applicant's waiver request based on a claim of extreme hardship to his lawful permanent resident spouse.

Although the applicant's spouse subsequently obtained lawful permanent resident status in the United States, as of the date of filing his application for a waiver of inadmissibility, on March 7,

2001, the applicant did not have a qualifying relative and, therefore, was statutorily ineligible for the relief sought. Therefore, the decision of the district director to deny the application based on the applicant's failure to establish extreme hardship to his lawful permanent resident spouse is withdrawn. The application is denied *de novo* based on the applicant's having been statutorily ineligible for the benefit sought at the time of filing the application.

In proceedings for application for waiver of grounds of inadmissibility under section 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 appeal will be dismissed.

ORDER: The decision of the district director dated September 12, 2002 to deny the application is withdrawn. The application is denied *de novo*.