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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: JUN 03 2004

IN RE: [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)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the acting district director and the AAO will be affirmed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States pursuant to 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 in August 1994. The applicant married a U.S. citizen in September 2001 and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside in the United States with his spouse.

The acting 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. The decision of the acting district director was affirmed on appeal by the AAO. *See Decision of the AAO*, dated November 22, 2003.

On motion to reconsider, counsel contends that the AAO erred in finding the applicant's spouse would not suffer extreme hardship under the terms of section 212(i) of the Act should the applicant be removed from the United States. Counsel cites precedent decisions and asserts that assessing the factors presented in the aggregate leads to a conclusion of extreme hardship. *Motion for Reconsideration*, dated December 19, 2003.

In support of these assertions, counsel submits Supplement to Motion for Reconsideration, dated March 16, 2004; copies of medical records for the applicant's spouse and a letter from a mental health professional, dated December 18, 2003. The entire record was reviewed and considered in rendering a decision on the application.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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

> (i) 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:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

To counter the previous findings of the AAO, counsel cites to seven cases in which the Board of Immigration Appeals (BIA) determined that the standard of extreme hardship was satisfied. *Motion for Reconsideration* at 3-5. The AAO finds that the instant application is distinguishable from each of the cases cited by counsel. Unlike the child presented in *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), the applicant's spouse is not left without an option to remain in the United States owing to the applicant's inadmissibility. As stated in the decision of the AAO on appeal, departure from the United States by a U.S. citizen is not required and is the result of the citizen's choice. *Decision of the AAO* at 5. *In Re Recinas*, 23 I&N Dec. 467 (BIA 2002), involved a single mother solely responsible for the support of six children with no connection to her native country of Mexico. Further, *Recinas* is a suspension of deportation application as is *Matter of Ching*, 12 I&N Dec. 710 (BIA 1968). The record fails to establish that the situation confronting the applicant and his spouse parallels those presented in any of the cases cited by counsel rendering the assertions of counsel unpersuasive.

Counsel fails to establish that the prior decisions of the acting district director and the AAO did not sufficiently consider the health of the applicant's spouse. The prior decision of the AAO discusses the evidence provided regarding the mental health of the applicant's spouse and indicates that the proffered psychologist's opinion finding symptoms of depression, "was apparently based on a single interview with Ms. Hondonero and does not mention any need for further treatment or medication." *Decision of the AAO* at 4. Likewise, the letter from Lisa Makata, Ph.D. offered by counsel on motion for reconsideration states that the doctor only met the applicant's spouse on one occasion and that "we are working towards getting her an appointment with a psychiatrist." *Letter from Lisa Makata, Ph.D.*, dated December 18, 2003. The provided medical records for the applicant's spouse fail to establish that the presence of the applicant is necessary for successful treatment of the medical condition of his spouse or that the inadmissibility of the applicant has any bearing on his spouse's asthma or abnormal hormonal development. Counsel fails to provide evidence that was not available previously and could not have been discovered during the prior proceedings under this application. Further, counsel fails to establish that the prior decision of the AAO was based on an incorrect application of law or CIS policy.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship, as stated in the prior decision of the AAO.

The applicant in this case has failed to identify any erroneous conclusion of law or statement of fact in his appeal. In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of November 22, 2003 dismissing the appeal is affirmed.