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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: LOS ANGELES, 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, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and 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 a visa and admission into the United States by fraud or willful misrepresentation on November 10, 1996. The applicant is the unmarried daughter of a U.S. lawful permanent resident father and the record contains an unadjudicated Petition for Alien Relative (Form I-130) on her behalf. The applicant seeks the above waiver of inadmissibility under section 212(i) of the Act in order to reside in the United States with her father and to adjust her 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 her lawful permanent resident father if her waiver were denied. The application was denied accordingly. The decision of the district director was affirmed on appeal by the AAO. *Decision of the AAO*, dated December 29, 2003.

On motion to reopen and reconsider, counsel states that the record in the application establishes extreme hardship to the applicant's father. *Motion for Reconsideration and Reopening*, dated January 26, 2004. Counsel requests an additional 45 days to submit updated and additional evidence. The AAO notes that approximately four months have elapsed since the filing of the appeal and no additional evidence has been received into the record. A decision will therefore be rendered based on the record as it currently stands.

Counsel resubmits an affidavit of the applicant's father, dated February 8, 2001; a letter to the United States Embassy in Manila from an attorney representing the applicant and her family, dated November 22, 1990 and an article addressing the mental health of the elderly. The entire record was reviewed and considered in rendering a decision on the application.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

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 asserts that the affidavit of the applicant's father states that the applicant, in particular, provides him with love and care. *Motion for Reconsideration and Reopening* at 3. Counsel points to the fact that the applicant is trained in nursing to support this assertion. *Id.* Further, counsel offers a letter written by prior counsel to the United States Embassy in Manila stating that the applicant personally attends to the needs of her father. *Letter from Edgardo Valino Geraldez*, dated November 22, 1990. Finally, counsel offers an article addressing the mental health of the elderly to support the assertion that separation from the applicant would cause her father physical harm at this stage in his life. *Motion for Reconsideration and Reopening* at 4.

Counsel fails to establish that the prior decisions of the acting district director and the AAO did not sufficiently consider the role of the applicant in her father's medical care. To the contrary, the prior decision of the AAO discusses the evidence provided regarding the care provided by the applicant to her father and concludes, "the record contains no medical or documentary evidence to indicate that Mr. Valino would suffer from any serious physical injury as a result of the applicant's removal from the United States." *Decision of the AAO* at 3. Counsel fails to provide evidence that was not available previously and could not have been discovered during the prior proceedings under this application. Counsel's resubmission of a letter that is close to 15 years old stating facts already substantiated in the record does not warrant an overturning of previous decisions in these proceedings. 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 father will endure hardship as a result of separation from the applicant. However, his 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 her 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 acting district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of December 29, 2003 dismissing the appeal is affirmed.