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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

File:

[Redacted]

Office: LIMA, PERU

Date: APR 05 2007

IN RE:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

IN BEHALF OF PETITIONER:

[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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Lima, Peru. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and affirmed the decision of the officer-in-charge to deny the application. The applicant filed a motion to reopen and reconsider the AAO's decision. The AAO denied the motion to reopen, and granted the motion to reconsider. After reconsidering its prior decision, the AAO affirmed its dismissal of the applicant's appeal. The matter is now before the AAO on a second motion to reopen and reconsider. The motion to reconsider will be denied. The motion to reopen will be granted, the prior decisions will be withdrawn and the application approved.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that, based on the evidence in the record, the applicant failed to establish extreme hardship to a qualifying relative, as contemplated by section 212(a)(9)(B)(v) of the Act. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated March 6, 2006. On May 22, 2006, the AAO affirmed this decision on appeal. On June 22, 2006, the applicant filed a Motion to Reopen and Reconsider the AAO's decision. On September 14, 2006, the AAO affirmed its decision to dismiss the appeal.

On November 6, 2006, the applicant filed the present Motion to Reopen and Reconsider the AAO's decision. On motion, counsel for the applicant contends that the applicant's sister¹ was granted a hardship waiver based on similar facts, and that the AAO failed to consider evidence from the applicant's sister's case. *Brief from Counsel* at 2-4, dated October 10, 2006. Based on this assertion, counsel states that the denial of the present application constitutes a violation of equal protection of the applicant's rights, as "there is no rational basis for granting the applications of [the applicant's sister] but denying the applications of [the applicant.]" *Brief from Counsel* at 2, 4. Counsel provides that in both cases, the applicants' U.S. citizen children suffered adverse effects from family separation, including anxiety and depression, and the applicants' spouses endured financial and emotional hardship. *Id.* at 3.

Counsel stated that all documentation submitted by the applicant's sister in connection with her applications should be contained in the Citizenship and Immigration Services (CIS) file under her alien number, and thus the AAO erred in disregarding such documentation. *Id.*

Counsel contends that the AAO failed to fully assess the impact of family separation. *Id.* at 4. Counsel cites the decisions of the Ninth Circuit in *Thomas Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1997) and *Contreras Buenfil v. INS* 712 F.2d 401, 403 (9th Cir. 1983) to stand for the proposition that "the most

¹ Counsel makes reference to the applicant's sister-in-law. However, the record supports that the individual whom counsel references, [REDACTED] is actually the applicant's sister. Specifically, Ms. [REDACTED] de Silva's Form I-601, [REDACTED]'s birth certificate, and the applicant's Form I-601 represent that they have the same mother, [REDACTED]. It is noted that the AAO previously identified the applicant's sister as her sister-in-law due to representations in the record, and the fact that the record lacked sufficient documentation to show that [REDACTED] de Silva is the applicant's sister.

important single hardship factor may be the separation of the alien from family living in the United States.” *Id.*

Counsel notes that the AAO cited the decisions of the Board of Immigration Appeals in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1966) and *Matter of Cervantes*, 22 I&N Dec. 560 (BIA 1999). *Id.* Counsel asserts that the present matter can be distinguished from *Matter of Cervantes*, as the applicant’s wife in *Matter of Cervantes* would not experience extreme hardship should she relocate to Mexico due to the fact that she was fluent in Spanish and the majority of her family was from there. Conversely, counsel provides that, in the present matter, the applicant’s husband does not speak the local language in Peru and he has no family there. *Id.* at 5. Counsel further contends that the applicant’s husband’s career and real estate interests are in the United States, and he would face the loss of his employment and real estate investments should he relocate to Peru. *Id.* Counsel states that, unlike the wife of the applicant in *Matter of Cervantes*, the applicant’s husband in the present matter has extensive financial ties to the United States. *Id.*

Counsel further asserts that the present matter can be distinguished from *Matter of Pilch* and *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), as the qualifying relatives in the cited matters had relatives in the respective applicants’ native countries, and they would not endure extreme hardship should they relocate abroad. *Id.*

Counsel observed that, in *Thomas Salcido-Salcido v. INS*, the Ninth Circuit found that it was error to attribute hardship to a qualifying U.S. citizen child resulting from family separation to parental choice rather than characterizing it as a consequence of deportation. *Id.* Based on the authority of *Thomas Salcido-Salcido v. INS*, counsel asserts that the AAO erroneously attributed any hardship the applicant’s husband would face if relocating abroad to his personal choice. *Id.*

Counsel stated that it appears that the AAO conceded that the applicant’s husband would experience extreme hardship should he relocate to Peru. *Id.* at 4.

Counsel asserts that the applicant’s husband will suffer extreme hardship if he remains in the United States because it will lead to “permanent separation from his wife and son.” *Id.* Counsel contends that the AAO overlooked the hardship to the applicant’s husband should he remain in the United States, and that the applicant’s husband has experienced loss of sleep and concentration that may affect his job performance. *Id.*

Counsel contends that the AAO failed to adequately evaluate the economic hardship to the applicant’s husband. *Id.* at 6. Counsel indicates that the applicant’s husband is considering borrowing money against his property to pay the additional costs of supporting a household in Peru and the United States, as well as legal fees. *Id.* Counsel asserts that the AAO failed to recognize that the expenses of the applicant’s husband’s two real properties equal approximately 50 percent of the applicant’s husband’s income. *Id.* Counsel states that the applicant’s husband faces the loss of his investments without the financial contribution of the applicant, who worked as a licensed vocational nurse in the United States. *Id.* Counsel provides that the applicant’s husband paid expenses for the applicant’s and his child’s health and dental expenses, as they are no longer covered on his health insurance plan. *Id.* Counsel states that the applicant’s husband has paid over \$10,240 to support the applicant and his child in Peru in the 21-month period between January 1, 2005 to October 4, 2006. *Id.*

Counsel contests the AAO's finding that the applicant has not shown that she is unable to work in Peru. *Id.* Counsel cites poverty statistics in Peru, and he claims that the applicant does not have a nursing license in Peru and she will lose her license in the United States if she is unable to return. *Id.*

Counsel contends that the AAO failed to consider that the applicant's husband would be unable to secure any employment in Peru due to his unfamiliarity with the Peruvian language and culture and poor economic conditions in the country. *Id.* at 7. Counsel cites the decision of the U.S. District Court for the Southern District of Texas in *Yu v. Marshall*, 312 F.Supp. 229 (S.D. Tex 1970), in which the court found that a structural design engineer subject to the J-1 foreign residency requirement would suffer extreme hardship if compelled to leave his specialized position and cease the practice of structural engineering. *Id.* Counsel states that the applicant's husband has been employed as an electronics engineer since January 2, 1992. *Id.*

Counsel asserts that the AAO disregarded evidence that public and rural medical facilities in Peru are inadequate, where the applicant and her son are likely to seek medical treatment. *Id.* at 6. Counsel states that the applicant's child continues to suffer from neurological seizures, fever seizures, acute diarrhea, and childhood pruritis, and he was diagnosed with Monoclonais E. A. D. (epileptic seizures.) *Id.* Counsel indicates that the physician of the applicant's child recommended an Electroencephalogram and Computerized Axial Tomography or Encephalon Magnetic Resonance exams. *Id.*

Counsel asserts that the factors of hardship to the applicant's husband, when considered in aggregate, constitute extreme hardship. *Id.*

On motion, the applicant submits a brief from counsel; a copy of the permanent resident card of one of the applicant's sisters; a copy of the birth certificates for two of the applicant's sisters; a copy of a naturalization certificate for one of the applicant's sisters; a copy of a Form I-601 application for a waiver submitted by the applicant's sister including a list of documents she purportedly provided with the application; a copy of a Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal submitted by the applicant's sister; statements from the applicant's father-in-law and mother-in-law; copies of documents reflecting the applicant's family's mortgage, property tax, and insurance expenses; a copy of the applicant's husband's bank account ledger reflecting expenses associated with supporting the applicant in Peru; documentation to show that the applicant's husband transmitted funds to the applicant in Peru; copies of recent medical records for the applicant's son, and; documentation relating to the applicant's husband's employment in the United States. The entire record was reviewed and considered in rendering a decision on this motion.

The regulation at 8 C.F.R. § 103.5(a)(2) 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 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.

Upon review, the applicant has asserted that the AAO's prior decision "was based on an incorrect application of law or Service policy" by stating specific legal grounds on which the AAO was in error. 8 C.F.R. § 103.5(a)(2). The applicant has supported these assertions by making references to the evidence of record and pertinent case law. However, while the applicant has submitted additional evidence that was not included with her prior filings before CIS, she has not shown that the AAO's decision was "incorrect based on the evidence of record at the time of the initial decision." 8 C.F.R. § 103.5(a)(2). Thus, the AAO will deny the motion to reconsider.

The regulation at 8 C.F.R. § 103.5(a)(2) 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."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.²

On motion, counsel for the applicant addresses facts that were previously presented to CIS. Counsel further discusses the health condition of the applicant's child, including the fact that he has been diagnosed with Monoclonais E. A. D. (epileptic seizures.) The applicant submitted additional documentation of her son's medical treatment. One such document from [REDACTED] a Neurologist in San Juan de Miraflores, reports that the applicant's son has been diagnosed with Monoclonias E.A.D. (myoclonias.) It is noted that the report from [REDACTED] is undated. Yet, the report references the fact that the applicant's son was two years and three months old at the time he was examined. As the applicant's son was born on June 15, 2004, he reached two years and three months of age on September 15, 2006. The AAO's prior decisions were issued on May 22, 2006 and September 14, 2006. Thus, it is evident that the diagnosis from [REDACTED] was not yet discoverable, and [REDACTED] report was not available for inclusion in the record of proceeding until the present Motion.

The AAO finds that the diagnosis of the applicant's son's myoclonias represents a new fact as contemplated by the regulation at 8 C.F.R. § 103.5(a)(2). Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the applicant has met that burden. The motion to reopen will be granted, and the present application will be reassessed based on the new information.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

² The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant entered the United States without inspection in 1991 and applied for asylum. The applicant's asylum application was denied and she was granted voluntary departure with a departure date in March 1996. The applicant departed the United States in April 2005. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 2005, the date of her departure from the United States. Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant does not contest her inadmissibility on motion.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Direct hardship the applicant or her child experience as a result of denial of the application is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include 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 significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Upon review of the new documentation submitted by the applicant, the applicant has established that a qualifying relative, her husband, will experience extreme hardship if she is prohibited from entering the

United States. The new evidence submitted by the applicant and the assertions of counsel will be discussed in detail below.

As in the prior motion, in the present motion counsel makes assertions based on a comparison between the present matter and a waiver proceeding involving the applicant's sister. However, the applicant has not shown that the decision in her sister's case was issued by an administrative or judicial body whose decisions constitute binding authority on CIS officers, such that the decision in the applicant's sister's case serves as binding precedent on the instant matter.

Counsel stated that all documentation submitted by the applicant's sister in connection with her applications should be contained in the CIS file under her alien number, and thus the AAO erred in disregarding such documentation. *Brief from Counsel* at 3. However, each application or petition before CIS constitutes a separate matter, and each applicant or petitioner bears the burden to enter evidence into the record of proceeding to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. An applicant or petitioner may not rely on non-precedent decisions, or the associated records of proceeding, to meet his or her burden of proof.

Further, the only evidence that the applicant provides to suggest that her sister's waiver application was approved consists of her sister's permanent resident card which postdates the signature on her Form I-601 application. Accordingly, the AAO is unable to determine the analysis or specific findings of the office that adjudicated the application.

The applicant provided some evidence associated with her sister's waiver application. Upon review of this documentation, the applicant's sister's case can be distinguished from the present matter in significant respects. For example, the applicant's sister's husband was caring for three children in the United States by himself, while the applicant's only child is with her in Peru and her husband is not charged with childcare responsibilities. A psychological evaluation of the applicant's sister's husband stated that he "relied . . . heavily on [the applicant's sister] for . . . financial support over the years and their home mortgage and daily bills require[d] two incomes." *Report from* [redacted] dated November 19, 2003. In contrast, the current record does not reflect that the applicant's husband relies on the applicant for his economic needs, as discussed in detail below. The AAO acknowledges counsel's contention that the applicant's son is enduring health problems which were not experienced by the applicant's sister's children. This fact further serves to show that the applicant's and her sister's applications are separate matters with differing equities. Based on the foregoing, the AAO is not compelled to draw conclusions based on a comparison between the applicant's sister's case and the present matter.

Accordingly, counsel's assertion that the denial of the present application constitutes a violation of equal protection of the applicant's rights, as "there is no rational basis for granting the applications of [the applicant's sister] but denying the applications of [the applicant,]" is not persuasive. *Brief from Counsel* at 2, 4.

Counsel asserts that the applicant's husband will endure financial hardship if the applicant is prohibited from entering the United States, and that the AAO failed to adequately evaluate the evidence of such hardship.

Brief from Counsel at 6. Specifically, counsel asserts that the AAO failed to recognize that the expenses of the applicant's husband's two real properties equal approximately 50 percent of the applicant's husband's income. *Id.* Counsel stated that the applicant's husband has paid over \$10,240 to support the applicant and his child in Peru in the 21-month period between January 1, 2005 to October 4, 2006. *Id.* The record reflects that the applicant's husband has held stable positions in the United States since January 2, 1992, and he earned an income of \$95,812.61 in 2005. *Letter from L3 Communications*, dated October 12, 2001; *Letter from Lucent Technologies*, dated November 15, 2001; *Letter from ITT Industries*, dated November 28, 2005; *2005 IRS Form W-2 for the Applicant's Husband*.

Counsel suggests that the AAO must look at the applicant's husband's cash flow to determine his level of economic hardship. While the applicant's husband's cash flow may suggest that the loss of the applicant's income and the additional expense of providing financial support for her in Peru place strain on his economic situation, it does not show that he lacks sufficient resources to meet his and his family's needs. Based on the documentation in the record, the monthly mortgage payments for the applicant's and her husband's two real properties total \$2834.44, or approximately \$34,000 annually. The applicant submitted documentation of real property taxes, yet the record does not clearly show whether such expenses are included in the monthly mortgage payments. The fact that one of the mortgage statements references an escrow account balance suggests that they are. In light of the fact that the applicant's husband paid approximately \$10,500 to support the applicant and his child in Peru over a 21-month period, he spends approximately \$500 per month, or \$6,000 annually. These combined mortgage and support expenses total approximately \$40,000 annually. As the applicant's husband earned an income of \$95,812.61 in 2005, and the record suggests that he continues to work in the same position, it is evident that he has sufficient resources to meet his economic needs. As noted in the prior decision, his annual compensation is well above the 2006 poverty line for a family of three, evaluated as \$16,600. *See Form I-864P, Poverty Guidelines*.

It is further noted that the applicant has not indicated whether her and her husband's second property earns income, such as rental fees. Thus, it cannot be determined whether the associated mortgage payments are offset by income, such that they constitute a true economic burden on the applicant's husband. The record suggests that the applicant's and her husband's second real property constitutes an asset that, if desired, may be sold to reduce monthly expenses and supplement their resources. The applicant's husband claims the address of the real property with a monthly mortgage and escrow of \$1,093.70, thus he can reduce his monthly mortgage liabilities by \$1740.74 by selling the second property. While the AAO acknowledges the applicant's husband's desire to maintain ownership of two real properties and the standard of living to which he is accustomed, the record does not support that he will endure significant economic hardship in the applicant's absence should he remain in the United States.

Counsel contests the AAO's finding that the applicant has not shown that she is unable to work in Peru. *Id.* Counsel cites poverty statistics in Peru, and he claims that the applicant does not have a nursing license in Peru and she will lose her license in the United States if she is unable to return. *Id.* While the AAO acknowledges that poverty is extremely high in Peru, such statistics do not reflect whether members of a specific economic or vocational class are subject to such poverty. The applicant has not provided any documentation to reflect whether those with training in nursing have difficulty securing employment. Nor has the applicant established that she lacks appropriate credentials to practice nursing in Peru, or that such

credentials would be difficult to obtain within a reasonable period of time. The applicant has not submitted sufficient evidence to support that she would be unable to secure employment in Peru, such that she would necessarily continue to be an economic burden on her husband. The applicant has not stated whether she has sought a job in Peru, whether she has in fact worked since she arrived in Peru, and if so, the amount of income she has earned.

Counsel contends that the AAO failed to fully assess the impact of family separation. *Brief from Counsel* at 4. Counsel cites the decisions of the Ninth Circuit in *Thomas Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1997) and *Contreras Buenfil v. INS* 712 F.2d 401, 403 (9th Cir. 1983) to stand for the proposition that “the most important single hardship factor may be the separation of the alien from family living in the United States.” *Id.* It is noted that the present matter does not arise within the jurisdiction of the Ninth Circuit, as the application was filed in Lima, Peru. Thus, the decisions of the Ninth Circuit, while instructive, are not binding on the present matter. Nevertheless, the AAO agrees that family separation is an important issue that must be examined carefully.

As discussed above, the applicant’s husband is currently in the United States, while the applicant and their son are in Peru. With the present motion, the applicant has provided two additional statements, from the applicant’s husband’s mother and father. The applicant’s father-in-law describes the distress that the applicant’s husband is experiencing due to separation from the applicant and his son, including depression and a loss of sleep and concentration. *Statement from Applicant’s Father-in-Law*, dated October 4, 2006. The applicant’s parents describe how the absence of the applicant and her child has disrupted their family bonds. *Id.*; *Statement from Applicant’s Mother-in-Law*, dated October 3, 2006. The applicant’s mother-in-law states that the applicant’s husband is only able to visit Peru on brief visits due to the difficulty in taking time away from his work. *Statement from Applicant’s Mother-in-Law*.

The applicant’s husband previously expressed that he is experiencing emotional hardship due to separation from the applicant and their son. *Statement from Applicant’s Husband* at 1-2, dated June 11, 2005. He indicated that he is deprived of their love, companionship, comfort, and support, and he provided that the financial burden on his family contributes to his emotional hardship. *Id.* at 1. He described his experience with conditions in Peru on two visits, and he expressed concern for his wife’s and son’s well being due to crime in Lima. *Id.* at 1-2. He stated that his son draws attention as one of light skin and partial American descent, and such individuals are the targets of financial crimes including kidnapping. *Id.* at 2. The applicant’s husband further expressed concern regarding his son’s welfare in Peru due to his son’s episodes of illness and inadequate healthcare. *Letter from Applicant’s Husband*, dated August 24, 2005.

The record reflects that the applicant’s son has experienced health problems in Peru, including diarrhea and convulsions incident to a fever. Prior to the present motion, the applicant had not submitted medical documentation that supports that her son was suffering from current health problems. Thus, the AAO was unable to conclude that the applicant’s son was in need of care above that which would ordinarily be required for a young child, or care that was unavailable in Peru. However, as discussed above, with the present motion the applicant now submits a report that shows that her son has been diagnosed with Monoclonias E.A.D. (myoclonias), understood to be a form of epilepsy. *Report from* [REDACTED] The AAO recognizes that the applicant’s child is experiencing medical problems that require advanced care. This fact

reasonably contributes to the applicant's husband's hardship, in that he is separated from his son and unable to participate in his care.

Counsel asserts that the AAO disregarded evidence that public and rural medical facilities in Peru are inadequate, where the applicant and her son are likely to seek medical treatment. *Brief from Counsel* at 6. Prior to the present motion, the applicant had not submitted evidence to support that the applicant's son would be compelled to receive care in Peru in a rural area where medical care standards are lower. However, it is noted that the report from [REDACTED] reflects that the applicant's son was examined in San Juan de Miraflores, a rural area in the northern part of Peru. Thus, the AAO finds sufficient evidence to support that the applicant's son may not be able to avail himself of immediate modern healthcare if needed. It is reasonable that this fact would cause the applicant's husband additional emotional hardship.

In its prior decision, the AAO commented that, as a U.S. citizen, the applicant's son may freely travel to and reside in the United States, thus he may avail himself of health services in the United States if the family chooses. However, the statements from the applicant's mother-in-law and father-in-law reflect the view of the applicant's husband's family that the applicant's son should remain with her in Peru. Particularly in light of the applicant's son's health problems, and the fact that the applicant has served as his primary care giver for his entire life, it is reasonable that bringing the applicant's son to the United States without the applicant would cause significant hardship for the applicant's son, which would in turn cause emotional hardship for the applicant's husband.

Accordingly, upon review of the additional documentation provided by the applicant, and considering all of the elements of hardship to the applicant's husband in aggregate, the AAO finds that the applicant's husband would experience extreme hardship should he remain in the United States without the applicant and his son.

Counsel stated that it appears that the AAO conceded that the applicant's husband would experience extreme hardship should he join the applicant in Peru. *Brief from Counsel* at 4. While the AAO did not concede this finding, the AAO now finds that the applicant's husband would experience extreme hardship should he relocate to Peru.

The record reflects that the applicant's husband has significant ties to the United States, including the presence and closeness of his parents and numerous family members, two real properties, and a lengthy career in electronic engineering. Conversely, the record shows that the applicant's husband does not speak Spanish, and he has no significant ties to Peru.

Counsel contends that the applicant's husband would be unable to secure any employment in Peru due to his unfamiliarity with the local language and culture and poor economic conditions in the country. *Brief from Counsel* at 7. It is evident that a lack of Spanish-language skill would limit the applicant's husband's employment opportunities in Peru. The applicant's husband has worked as an electronic engineer in the United States for approximately 15 years, and in his present position for approximately four and one half years at a substantial salary. It is understood that technology advances rapidly, particularly in electronics and computer-centered fields of endeavor. Should the applicant's husband depart his field of expertise for an extended period, his future prospects for employment, both in the United States and elsewhere, would likely

be negatively impacted. The halt of his career progress would represent a significant hardship, both economic and emotional.

It is reasonable that the applicant's husband would endure significant emotional hardship should he be separated from his parents, relatives, and associates in the United States. The applicant's husband would experience further hardship due to adapting to an unfamiliar language and culture. The applicant's husband previously expressed concern regarding crime in Peru, and he referenced his perception of the risk of financial crimes including kidnapping against those of light skin and American descent. *Statement from Applicant's Husband* at 1-2.

The AAO further notes that the applicant's husband would endure economic hardship should he relocate to Peru. As noted above, the applicant's husband would face the loss of his significant annual income. Also discussed above, the applicant's family owns two real properties, in one of which they held approximately \$255,000 of equity as of January 28, 2005. While these properties could be sold to help allay the costs of relocating to and residing in Peru, it is understood that the liquidation of investments and relinquishment of a family home to pay present expenses would likely cause a decrease in net worth and some negative economic and emotional consequences. While the applicant has not shown that she and her husband would be unable to meet their economic needs in Peru, the economic detriment associated with the applicant's husband relocating to Peru must be given due weight.

Also discussed above, on motion the applicant has provided documentation to show that her son requires ongoing medical care due to his diagnosis of Monoclonias E.A.D. He most recently received health care services in a rural area of Peru. Should the applicant's husband join the applicant in her current location, the record suggests that the applicant's son would be compelled to forego medical services of the standard that he may receive in the United States. It is reasonable that such fact would cause additional emotional hardship to the applicant's husband.

Accordingly, upon review of the additional documentation provided by the applicant, and considering all of the elements of hardship to the applicant's husband in aggregate, the AAO finds that the applicant's husband would experience extreme hardship should he relocate to Peru to join the applicant and their son.

Based on the forgoing, the AAO finds that the applicant's husband will face extreme hardship if the applicant's waiver application is denied. Thus, the applicant has shown that a qualifying relative would suffer extreme hardship if she is prohibited from entering the United States.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for section 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant knowingly remained in the United States without a legal status for approximately nine years, from March 1996 until April 2005.

The positive factors in this case include:

The applicant has significant family ties to the United States, including her husband, her mother-in-law and father-in-law, two sisters, and her mother. The applicant's son is a United States citizen. The applicant has worked as a nurse in the United States, and she has completed training toward becoming a registered nurse. The applicant has participated in a community organization, namely she attended a church regularly. The applicant's husband, a United States citizen, would suffer extreme hardship should she be prohibited from entering the United States. The applicant's son would likely benefit from medical care he would receive in the United States. The applicant owns real estate in the United States. The applicant has not been convicted of any crimes.

Although the applicant's immigration violation cannot be condoned, the positive factors in this case outweigh the negative factors.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

ORDER: The motion is granted. The previous decisions are withdrawn and the application is approved.