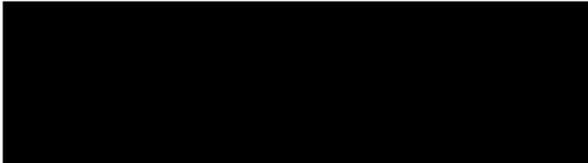




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



FILE:



Office: LIMA, PERU

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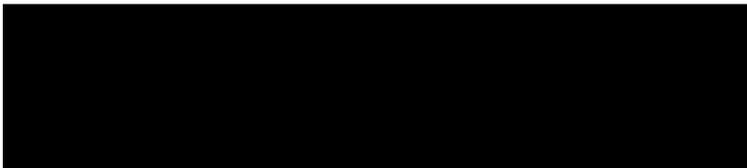
IN RE:



APPLICATION:

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

ON BEHALF OF APPLICANT:



PHOTOCOPY

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application declared moot, as the applicant is not inadmissible.

The applicant is a native and citizen of Bolivia 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 ten years of her last departure from the United States. The applicant is married to a naturalized citizen of the United States and 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 had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. On appeal, counsel asserts that the officer in charge applied a higher than required standard in assessing the establishment of extreme hardship to the applicant's spouse. Counsel contends that the record shows that the applicant's husband will experience extreme emotional harm should the applicant be removed.

The officer in charge's denial was dated August 22, 2005; however, counsel asserts that neither she nor the applicant received the decision until the officer in charge sent it to her via facsimile on October 21, 2005, upon counsel's request. The AAO has reviewed counsel's explanation, as supported by the applicant's affidavit of October 24, 2005, and finds the evidence sufficiently detailed and plausible. Hence, the appeal is accepted as timely.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

(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 with a visitor's visa on January 6, 2001 and remained until November 30, 2001. The applicant returned to Bolivia to collect her two younger sons, and she attempted to bring them into the United States without authorization on December 18, 2001. Although the applicant herself held a valid nonimmigrant visa, her sons did not; hence she attempted unlawful entry along with them. The applicant was paroled into the United States and was placed into immigration proceedings. She subsequently married a U.S. citizen, who filed a petition for alien relative on the applicant's behalf. In view of the pending petition, the Immigration Judge administratively closed proceedings against the applicant on February 7, 2003. The petition was approved in 2004, and the applicant subsequently left the United States in January 2005 in order to attend her immigrant visa interview in Bolivia.

The AAO notes that an alien paroled into the United States for the purposes of immigration proceedings does not begin to accrue unlawful presence until the Immigration Judge orders the alien removed. *See Memorandum by Paul W. Virtue, Acting Executive Associate Commissioner, Office of Field Operations* dated September 19, 1997, last updated March 21, 2003. As the Immigration Judge administratively closed proceedings and never issued a final order, the applicant did not accrue unlawful presence prior to her departure in January 2005. Further, in 2001 she accrued unlawful presence from June 7, 2001, the date on which her visitor's visa was no longer valid, until her departure on November 30, 2001, a period of 176 days, less than the 180 days necessary for a finding of inadmissibility under section 212(a)(9)(B)(I) of the Act. The applicant is, therefore, not inadmissible under either section 212(a)(9)(B)(I) or (II) of the Act and no waiver is necessary.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(9)(B) of the Act, the applicant has met her burden of proving eligibility. As the waiver application is unnecessary, the appeal is also unnecessary; therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.