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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: LIMA, PERU Date: AUG 29 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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 Bureau of Citizenship and Immigration Services (Bureau) 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 Officer in Charge, Lima, Peru. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed and the order dismissing the appeal will be affirmed.

The record reflects that the applicant is a native and citizen of Bolivia who was found to be inadmissible to the United States (U.S.) under 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 a period of more than one year. The applicant is married to a naturalized U.S. citizen and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to reopen his waiver of inadmissibility application in order to reside in the United States and adjust his status to that of a lawful permanent resident.

The officer in charge denied the application after concluding that the applicant had failed to establish extreme hardship would be imposed upon a qualifying relative. The AAO affirmed the decision on appeal.

In the present motion to reopen, counsel asserts that he has new and additional information establishing that the applicant's qualifying relatives will suffer extreme hardship if the applicant is not allowed to return to the United States. In support of this assertion, counsel submitted employment letters for the applicant's wife (Mrs. [redacted] and an affidavit from a social worker stating that the lengthy separation from her husband has caused the applicant to feel unhappy and anxious and has caused financial difficulties.

Counsel additionally asserts that the applicant's sister should be considered a qualifying relative in the applicant's case because she is a lawful permanent resident in the United States.

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

> (B) Aliens Unlawfully Present.-
>
> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> . . . .
>
> (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 . . . .

[Emphasis added] It is clear that an alien's lawfully resident sibling is not considered a qualifying relative for section 212(a)(9)(B)(v) purposes. Thus, despite assertions by counsel to the contrary, the applicant's sister is not a qualifying relative and hardship to her will not be considered in the present waiver application.

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

> (a) Motions to reopen or reconsider
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> . . . .
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> (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.
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> . . . .
>
> (3) Requirements for motion to reconsider. 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.
>
> (4) Processing motions in proceedings before the Service. A motion that does not meet

> applicable requirements shall be dismissed
> . . . .

The affidavit submitted by counsel regarding hardship to Mrs. [redacted] lacks probative value. *See* Social Worker's Affidavit, written by [redacted] dated November 14, 2002. The affidavit is written by a social worker with a stated expertise in Asian cross-cultural social issues. It is noted that the author of the affidavit is not a licensed psychologist, psychiatrist or medical professional, nor has she established that she has any expertise regarding country conditions in Bolivia. Counsel thus failed to establish that Ms. [redacted] is qualified to make conclusions regarding Mrs. [redacted] mental state or regarding the economic and social situation that Mrs. [redacted] would face in her native country of Bolivia. The information in the affidavit will thus not be considered.

Moreover, even if counsel had established that Ms. [redacted] was qualified to make the conclusions made in her affidavit, the information contained therein would not have been considered new information. The prior officer in charge and AAO decisions both discussed the claim that Mrs. [redacted] was depressed, had fertility problems and required the emotional and financial support of her husband.

Because counsel failed to establish any erroneous conclusion of law or statement of fact in his motion to reopen, the motion will be dismissed.

ORDER: The appeal is dismissed and the order of October 16, 2002, dismissing the appeal is affirmed.