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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LIMA, PERU Date: MAR 08 2005

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 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 and reconsider. The motion will be granted, the previous decisions of the acting officer in charge and the AAO will be withdrawn and the application approved.

The applicant is a native and citizen of Peru who was found by a consular officer 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 attempted to procure admission to the United States by fraud or willful misrepresentation. The applicant is the son of lawful permanent residents of the United States and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his parents and siblings.

The acting officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge,* dated September 16, 2003. The decision of the acting OIC was affirmed on appeal by the AAO. *Decision of the AAO*, dated November 19, 2004.

On motion to reopen and reconsider, counsel asserts that the decision of the AAO was not made on the full record. *Motion to Reconsider and/or Reopen*, dated December 28, 2004. Counsel contends that supplemental evidence was timely filed on behalf of the applicant and should have been considered by the AAO. Therefore, a motion to reopen and reconsider is warranted in order to consider the compelling evidence that was overlooked in the decision on appeal. *Brief in Support of Motion to Reconsider and/or Reopen*, dated December 28, 2004.

The record on motion to reopen and reconsider contains a brief, dated December 28, 2004; a copy of an AAO decision, dated April 15, 2004; a copy of an AAO decision, dated January 5, 2004; a declaration of counsel, dated December 28, 2004; a declaration of an attorney licensed to practice law in the State of New York, dated December 27, 2004; a copy of a United States Agency for International Development report on Peru; a copy of a transcript of a press conference with the President of the United States, dated December 20, 2004; a brief, dated October 4, 2004; a copy of a psychological evaluation conducted by [redacted], Ph.D. of the applicant's parents and other family members; a copy of a report from The World Factbook on Peru; a copy of a report from The World Factbook on the United States; a copy of a United States Department of State report addressing country conditions in Peru; a copy of a consular information worksheet for Peru, dated September 13, 2004 and copies of Federal Express paperwork relating to documentation sent by counsel. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant attempted to obtain entry into the United States using fraudulent documentation on two separate occasions. On his first attempt, the applicant presented a passport containing a visa-page substitution and was allowed to withdraw application for entry and granted voluntary departure. On his second attempt, the applicant presented a photo-substituted passport and was again granted voluntary departure.

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.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's parents. 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.

Counsel contends that the applicant's parents would suffer hardship as a result of relocation to Peru in order to reside with the applicant. Counsel asserts that the applicant's parents are lawful permanent residents of the United States who has been living in this country for more than 11 years. Counsel indicates that the applicant's parents have significant family ties in the United States and no relatives, other than the applicant and his children, remaining in Peru. *Brief in Support of Motion to Reconsider and/or Reopen* at 4. Counsel further contends that the parents of the applicant would face extreme economic difficulties if they attempted to reenter the work force in Peru at their advanced ages. *Id.* at 8. Counsel submits several country condition reports to substantiate his assertions regarding the impoverished conditions that characterize the applicant's native country. Counsel states that the applicant's parents would lose any chance of ever becoming United States citizens if they returned to Peru. *Id.*

Counsel establishes that the applicant's mother will suffer extreme hardship if she returns to Peru or remains in the United States in the absence of the applicant. Counsel submits a letter from a licensed psychologist indicating that the applicant's mother suffers from Post Traumatic Stress Disorder and recurrent depression. *Letter from Maria J. Nardone, Ph.D.*, dated September 13, 2004. The evaluating psychologist reveals that the applicant's parents suffered the loss of one of their children to a tragic fire when the child was only a baby *Id.* at 2. Further, the psychologist reports that as a result of leaving the applicant's siblings in the applicant's care in order to emigrate to the United States, the applicant's parents suffered emotional and psychological hardship. *Id.* at 3. The report reflects that the applicant's parents and siblings were traumatized by their five-year separation. *Id.* The evaluating psychologist indicates that the applicant's mother suffered from panic attacks at the time her baby son died in the fire; while she was separated from her children for five years and upon learning that the applicant's admission to the United States was denied. *Id.* at 4. During one episode, she experienced such severe chest pain that she was taken to the emergency room. *Id.* The evaluating psychologist indicates that the applicant's mother is "chronically depressed." *Id.* at 5.

The situation presented in this application rises to the level of extreme hardship because the record demonstrates that the applicant's mother would suffer extreme emotional distress if her son is denied admission to the United States. The suffering experienced by the applicant's mother would surpass the hardship typically encountered in instances of separation because of the disturbing, traumatic circumstances under which the applicant's parents lost their infant son in a house fire and the resulting history of psychological problems suffered by the applicant's mother caused, in large part, by separation from family members.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship to the applicant's mother and the passage of more than thirteen years since the applicant's immigration violations. The unfavorable factors in this matter are the applicant's willful misrepresentations to officials of the U.S. Government in seeking to obtain admission to the United States. The AAO notes that the applicant does not appear to have a criminal record.

While the applicant made willful misrepresentations in order to obtain admission to this country, the AAO notes that over 13 years have elapsed since the applicant's immigration violations. The AAO finds that the hardship imposed on the applicant's mother as a result of his inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

On motion to reopen and reconsider, the applicant provides evidence that was not available to the AAO, through no fault of the applicant, in rendering its decision on appeal pursuant to 8 C.F.R. § 103.5(a)(2).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has now met that burden. Accordingly, the previous decisions of the acting officer in charge and the AAO will be withdrawn and the application will be approved.

ORDER: The motion is granted. The decision of November 19, 2004 dismissing the appeal is withdrawn and the waiver application is approved.