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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] Office: Los Angeles, CALIFORNIA Date: **JAN 26 2009**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the district director for further action as noted below.

The record reflects that the applicant is a native and citizen of Peru who submitted an Application for Waiver of Grounds of Inadmissibility (Form I-601) based on a purported ground of inadmissibility 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 willfully misrepresenting a material fact to procure an immigration benefit. The applicant is the daughter of a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her father and children in the United States.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen parent and denied the application accordingly. *Decision of the District Director*, dated June 22, 2006.

On appeal, counsel contends that the applicant never wilfully misrepresented a material fact and that a waiver of inadmissibility is, therefore, unnecessary.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

In this case, the record shows that the applicant entered the United States with her two minor children on December 13, 2000, using a visitor's visa that authorized their stay for six months. On March 21, 2001, the applicant returned to Peru for ten days due to work related duties and left her children with her father. *Declaration of* [REDACTED] dated April 18, 2008, at ¶ 11; *Work Certification from SERVISA*, translated on September 13, 2007. At that time, she asked her employer if she could remain on leave without pay until April 30, 2001, and her employer agreed. *Declaration of* [REDACTED] *supra*, at ¶ 13; *Work Certification from SERVISA, supra*. On March 31, 2001, the applicant re-entered the United States, told the immigration inspector that she came to the United States to pick up her daughters who were on vacation in the United States, and was admitted into the country. *Declaration of* [REDACTED] *supra*, at ¶¶ 6, 14. On April 10, 2001, the applicant's husband entered the United States. *Id.* at ¶ 15. The applicant contends that in early May 2001, her husband, who had been abusive towards her and their children, raped her. *Id.* at ¶¶ 15, 16, 17. She claims that it was not until he raped her that she decided she could not return to Peru with him. *Id.* at ¶ 18. The applicant and her children remained in the United States after their visa expired. *Id.* A copy of the Dissolution of Marriage in the record indicates that the applicant divorced her husband on October 1, 2002. *Id.* at ¶ 19.

On April 4, 2006, the applicant was interviewed for her adjustment of status application. According to the applicant's declaration, the interviewing officer, who was male, "spoke Spanish very poorly[,] was rude[,] accused [her] of committing fraud[, and] told [her] it was wrong of [her] to leave [her] children in the United States." *Id.* at ¶ 3. The applicant contends the officer did not want to listen to her and did not believe anything she said. *Id.* at ¶ 4. In addition, the applicant claims the officer asked her daughters, the older one of whom was fourteen years old at the time, inappropriate questions, including "if they were in a gang, used drugs, and if they had prostituted themselves." *Id.* Furthermore, the applicant asserts the officer gave her a document in English to sign which he "just told [her] to sign[,] did not allow [her] to look at and read the document[,] did not translate the document to [her, and] did not give [her] a copy of the document." *Id.* at ¶ 5. According to the affidavit the applicant signed, she stated during her interview that the purpose of her entry on March 31, 2001, was "[b]ecause my two daughters were in the United States and to resume my residency." *Record of Sworn Statement*, dated April 4, 2006 (emphasis added). The applicant claims that she never stated she was returning to the United States to resume her residency, and that if she "had known what the officer had written on that document as true, I never would have signed it. It was not true." *Declaration of Patricia Lozano Saavedra, supra*, at ¶ 6.

In response to the applicant's Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B), which was filed on July 20, 2006, the interviewing officer submitted a memo for the record stating that he is "fluent in the Spanish language and was raised in a Spanish/English home environment for 18 years." *Memo to File*, dated October 18, 2006. The officer further states that he took Spanish classes in high school and was hired by the former INS for his Spanish background. *Id.* The officer states that he is "not limited in [his] ability to converse, write or read Spanish." *Id.* Because the Form I-290B only asserted that there was a "language barrier," and the allegations of the officer's inappropriate conduct were not detailed until the applicant submitted her brief, it does not appear the officer had an opportunity to address the allegations of his inappropriate conduct.

Because of the inconsistencies in relating what happened during the applicant's adjustment interview, the AAO is remanding the matter to the district director. The director shall schedule a new interview with a different officer and allow the applicant's counsel to be present. If the new interview confirms the initial decision that the applicant committed fraud or willfully misrepresented a material fact in order to procure an immigration benefit, the record, including a new sworn statement, shall be returned to the AAO to adjudicate the waiver application. If the new interview confirms the applicant's statement that she did not intend to resume her residency in the United States, the initial decision of the director shall be withdrawn and the waiver application approved.

ORDER: The appeal is remanded for further proceedings consistent with this decision.