

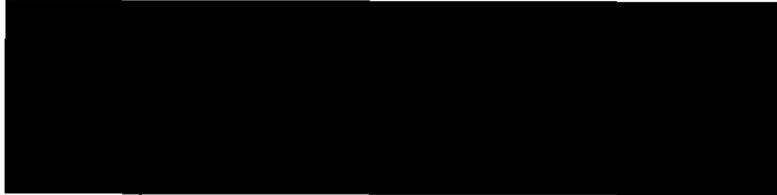
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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SEP 01 2011

DATE: Office: LIMA, PERU FILE:

IN RE: Applicant

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and section 212(d)(11) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(d)(11).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Peru who presented falsified bank documents in an attempt to obtain a visa for her two sons to enter the United States in 1995. The applicant was found 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), and pursuant to section 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E) for alien smuggling. She is the mother of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Acting Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), date of service April 27, 2009.

On appeal, counsel for the applicant asserts that the Acting Field Office Director erred in finding the applicant had attempted to smuggle her two sons, failed to apply the standard for a waiver of section 212(a)(6)(E) as proscribed at 212(d)(11) and failed to establish that the applicant's misrepresentation was material and rendered her inadmissible under section 212(a)(6)(C). *Form I-290B*, received May 26, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) 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 chapter is inadmissible.

The record indicates that the applicant presented falsified bank documents to a U.S. consular officer when attempting to obtain a visa for her two sons to enter the United States in 1995. The applicant had a B1/B2 visa at the time, and was attempting to obtain visas so that her two sons could enter the United States with her. She presented a bank document to the consular officer which showed that she had a bank account with a balance of \$8000. When the bank was called it was determined that the bank account only had \$500. Based on the applicant's misrepresentation during her sons' 1995 visa interview, the Field Office Director found the applicant inadmissible under section 212(a)(6)(C) of the Act.

Counsel asserts on appeal that the Acting Field Office Director improperly applied section 212(a)(6)(C) because the applicant was not attempting to obtain a benefit for herself and cites to *Kungys v. U.S.*, 485 U.S. 759, 767 (1988). However, *Kungys* deals with the denaturalization provision at 8 U.S.C. § 1451 and, while it discusses materiality in general, it does not stand for the proposition that an alien must be seeking a benefit for themselves in order to be inadmissible under

section 212(a)(6)(C). However, the AAO notes that false representations made in connection with another alien's application for benefits under the Act does not make the alien who misrepresented a material fact inadmissible under section 212(a)(6)(C)(i) of the Act. *See* USCIS Memorandum, *Section 212(a)(6) of the Immigration and Nationality Act, Illegal Entrants and Immigration Violators*, from Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 3, 2009 at page 20. *See also, Matter of M-R-*, 6 I&N Dec. 259 (BIA 1954)(holding that the procurement of documentation for an alien's children did not render the alien inadmissible under former section 212(a)(19) of the Act).

As such, the AAO determines that the applicant is not inadmissible under section 212(a)(6)(C)(i) and will examine her application for waiver under section 212(d)(11).

Section 212(a)(6)(E) of the Act states, in relevant part:

(i) In general. Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification. Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 1153(a)(2) of this title (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

Section 212(d)(11) States, in relevant part:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) of this section in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 1181(b) of this title and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 1153(a) of this title (other than paragraph (4) thereof), if the alien has encouraged,

induced, assisted, abetted, or aided only an individual who at the time of such action was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

As noted above, the record indicates that the applicant presented falsified bank documents to a U.S. consular officer when attempting to obtain a visa for her two sons to enter the United States in 1995. USCIS records indicate that the bank was called and confirmed that the document was falsified. The applicant has not submitted any documentation to support the assertion that she is not inadmissible under section 212(a)(6)(E). As such, the AAO finds the record to establish that the applicant presented falsified bank documents in order to encourage, induce, assist, abet, and/or aid her two sons in trying to enter the United States and is therefore inadmissible under section 212(a)(6)(E) of the Act.

Counsel asserts on appeal that the consular officer failed to apply the standard of 212(d)(11) to the applicant's request for admission. The application of clause (i) of section 212(a)(6)(E) for family reunification purposes or to reunite a family is discretionary. 8 C.F.R. § 212(d)(11).

The applicant is the beneficiary of an approved I-130, Petition for Alien Relative, under section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i). The record shows that she was attempting to obtain a visa for her two sons when she presented the false bank documents in 1995. The applicant therefore meets the prima facie requirements for a discretionary waiver under section 212(d)(11) and the AAO may evaluate whether she warrants a waiver for humanitarian purposes, to ensure family unity or if it is otherwise in the public interest to do so.

The negative factor in this case is the fact that the applicant still denies that the bank documents she presented in 1995 were fake. The amount in her bank account at the time was verified and the documents were confirmed as fake. Other factors which impact this case are the fact that the applicant has a daughter and three grandchildren who reside in the United States. The AAO also notes that the applicant does not appear to have any criminal record, either in Peru or the United States. Based on these facts the AAO will exercise favorable discretion and approve the waiver application on the basis of family unity.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.