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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MADRID, SPAIN Date: NOV 01 2004

IN RE: [redacted]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge (AOIC), Madrid, Spain. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Portugal 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 10 years of her last departure from the United States. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The AOIC 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. *Decision of the Acting Officer – in-Charge,* dated December 16, 2003.

On appeal, the applicant contends that her husband, Jamal Brathwaite (Mr. Brathwaite), a United States citizen, will suffer extreme hardship if the applicant is refused admission to the United States. In support of the appeal, the applicant submitted two letters from herself, a letter from Mr. Brathwaite, a letter verifying Mr. Brathwaite's employment, a record of Mr. Brathwaite's student loans, and letters commending Mr. Brathwaite. The entire record was considered in rendering a decision on the appeal.

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-
> >
> > > (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 indicates that the applicant was admitted to the United States as a Visitor under the Visa Waiver Program on January 20, 2000. She returned to Portugal in October 2002. In addition to remaining in the United States beyond the period she was authorized to stay, the applicant engaged in unauthorized

employment in the United States from 2000-2002. The applicant is seeking admission to the United States within ten years of her October 2002 departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

The concept of extreme hardship "is not . . .fixed and inflexible," and whether extreme hardship has been established is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) provided a list of non-exclusive factors to determine whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of the departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* At 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Each of the *Cervantes* factors listed above is analyzed in turn. First examined is the financial impact on of the applicant's departure from the United States. The applicant submitted two letters in which she explains why will experience hardship if her waiver of inadmissibility is denied. The applicant stated that she worked in the United States from 2000-2002 while she was earning a high school degree, however, the record contains no evidence of the amount of her income. In his letter supporting the applicant's waiver, stated that he works for nd that he would begin paying off a $13,000 student loan in March, 2004. The AAO notes that as a U.S. citizen, is not required to reside outside of the United States if the applicant's waiver request is denied. The record contains no evidence establishing that would be unable to meet the family's financial obligations if the applicant remains in Portugal.

The next *Cervantes* factor is country conditions where the qualifying relative would relocate maintains that he will not be able to find suitable employment in Portugal because he does not speak Portuguese and is not familiar with Portuguese culture. also stated that he would not have the

opportunities for higher education that are available in the United States. The record contains no specific evidence addressing country conditions in Portugal. The applicant has not demonstrated that she would be unable to contribute to the financial support of the family if she lives in Portugal, nor has she demonstrated that would be unable to find suitable employment in Portugal.

Another *Cervantes* factor is significant health conditions. The applicant does not mention any health conditions. stated that his father suffers from arthritis and high blood pressure, and that his mother suffered a stroke in May 2003. parents are not qualifying relatives, therefore hardship they would experience is not relevant to determining if the applicant qualifies for the waiver.

The final *Cervantes* factor is family ties. stated that without his wife, "I am absolutely incomplete and saddened." The applicant left the United States in October, 2002, so she and have been separated since that time. The record contains no evidence of the specific effects of the separation or the potential future effects. If remains in the United States, he has his parents, a brother, and a sister to provide emotional support. He has liberal rights to visit the applicant in Portugal. Accordingly, the applicant has not demonstrated that would suffer extreme hardship due to the separation.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.