U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: SEP 1 0 2004

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 District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Brazil who was found inadmissible to the United States under 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her spouse.

The district director 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 District Director*, dated July 13, 2002.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services] failed to consider all of the evidence; failed to consider the cumulative effect of all of the hardship and erred in considering the marriage of the applicant an after-acquired equity. *Form I-290B*, dated August 7, 2002.

In support of these assertions, counsel submits a brief, dated August 5, 2002. The record also contains an affidavit of the applicant's spouse, dated December 3, 2001; an affidavit of the applicant, dated December 3, 2001; letters of support and copies of financial and tax documents for the applicant and her spouse. The entire record was considered in rendering this decision.

The record reflects that on or about December 3, 1994, the applicant presented a passport and visitor visa in the name of another individual in order to obtain admission to the United States.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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 that:

> (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.

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 herself 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 spouse. 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 (BIA) 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 spouse would suffer extreme hardship if he relocates to Brazil in order to remain with the applicant. Counsel states that the applicant's spouse would suffer economic hardship in abandoning his job and selling his home in the United States and would also suffer emotionally as a result of leaving his family members to whom he feels very close. *Administrative Appeal of Denial of 212(i) Waiver in Matter of Elena Cassia Fonseca Rezende, A78-462-268*, dated August 5, 2002. Counsel emphasizes the psychological, emotional and "other forms of support" that the family of the applicant's husband provides him and indicates that moving to Brazil would force him to start over in building a support network in a country where he has not resided since he was a teenager. *Id.* at 3.

Counsel fails to establish that the applicant's husband would suffer extreme hardship if he remains in the United States maintaining close proximity to his family members, his employment and ownership of his home. The AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Counsel contends that the applicant's husband "would be at a loss and would not know what to do" if he were separated from the applicant. *Id.* Counsel submits letters from family members, the employer of the applicant and friends attesting to the applicant's character and stating that they will suffer loss as a result of separation from the applicant. Counsel asserts that the district director failed to weigh these statements in making a determination of hardship. *Id.* at 2. The AAO finds, however, that the district director listed each of these letters in the decision and commented on the evidence presented by them in relation to hardship suffered by the applicant's spouse. *Decision of the District Director.* Counsel contends that the district director fails to consider the closeness of the applicant's family and the value of the applicant to her spouse as described in the proffered letters. *Administrative Appeal of Denial of 212(i) Waiver in Matter of Elena Cassia Fonseca Rezende, A78-462-268* at 2. While the AAO acknowledges that the letters of support in the record indicate that the applicant is beloved, makes her spouse happy and is "very bright, hard-working, and self-motivated," these letters fail to evidence a level of hardship rising to the level of extreme. *Letter from Gail Kavaler*, dated December 3, 2001. *See also Letter from Maria Auxiliadora Guenther*, dated December 3, 2001.

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. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse will likely endure hardship as a result of separation from the applicant. However, his situation, based on the record, 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.