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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES, CA

Date: AUG 31 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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 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 procured entry into the United States by fraud or willful misrepresentation. The applicant is the spouse of a 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 in the United States with his spouse who petitioned for him in this case.

The district director concluded that the applicant 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 April 21, 2004.

On appeal, counsel asserts that the district director did not consider the specific facts presented, narrowly defined the level of requisite hardship and did not consider relevant hardship factors as mentioned in case law. *See Form I-290B*, dated May 21, 2004.

In support of these assertions, counsel submits a brief, psychotherapist's letter, photographs, tax return and a deed of trust. The record also includes previously submitted documents including paystubs, utility bills and bank statements. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant made a material misrepresentation to the U.S. government while entering the United States. Specifically, the applicant represented himself as a U.S. citizen. As a result of this prior misrepresentation, the applicant is inadmissible under section 212(a)(6)(C) of the Act.

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.

Counsel asserts that the district director did not consider the specific facts presented. The AAO notes that the district director addresses many of the facts of the applicant's spouse in a cursory and general manner. *See Decision of the District Director*, at 1.

Counsel states that the district director narrowly defined the level of requisite hardship and did not consider relevant hardship factors as mentioned in case law. The precedent case used to determine extreme hardship is *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). Therefore, an analysis under the factors mentioned in *Matter of Cervantes-Gonzalez* is appropriate for this decision.

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 lawful permanent resident or United States citizen family ties to 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.

The record indicates that the applicant's spouse has three U.S. citizen children and there is no mention of family ties in Brazil. There is no mention of country conditions in Brazil other than the applicant's brief reference to the lack of safety and medical, academic and social opportunities for his children. *Psychotherapist's Report*, at 1, dated May 22, 2004. There is no mention of the applicant's spouse's ties to Brazil, if any.

The applicant states that his spouse would not be able to support herself and the children and that they would not be able to keep the same or similar lifestyle if he left the country. *Applicant's Statement*, at 2, dated February 8, 2000. He also states that they have medical, dental and life insurance through his employer. *Id.* The record indicates that as of 1999-2000, the applicant earns \$1900 per month after taxes and his spouse earns \$1000 per month after taxes. The applicant's spouse states that she is a teacher who arrives home by 1 P.M., therefore, it appears that she is working part-time. *Applicant's Spouse's Statement*, at 4, dated February 8, 2000. The record includes numerous bills and the applicant's spouse estimates their monthly expenses at approximately \$2100 per month with a current credit card debt of \$4,500. *Applicant's Spouse's Statement*, at 2. Joint bank statements until December 1999 reflect deposits and expenses being nearly equal. *See Joint Bank Statements*, various dates. The record does not include current financial documents for the applicant and his spouse. The record includes the 2003 federal tax return for the applicant and his spouse with a total income of \$82,055 and the deed of trust for their home. The record does not include W-2 forms, therefore, it is not clear how much the applicant or his spouse is making individually. Furthermore, no evidence is provided that the applicant or his spouse cannot find employment in Brazil.

The record does not mention significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. The psychotherapist does mention that deportation has the potential to cause serious anxiety and depression in the applicant's spouse. *Psychotherapist's Report*, at 2. However, this is a one-time letter which does not mention any current problems or a course of treatment. Counsel states that a number of factors, such as economic and political conditions of the foreign country, were not taken into consideration and cites many cases with these factors. *Form I-290B*, at 1-2. However, counsel fails to address nearly all of these factors and fails to provide documentation addressing these factors.

Counsel references the psychotherapist's letter and photographs to demonstrate the family relationships and the hardship the family will face if the applicant is denied admission to the United States. The AAO agrees with the district director that the waiver statute does not consider hardship to the applicant's children. The law refers to hardship to the spouse and counsel has not shown that the applicant's spouse will face hardship due to the children's hardship.

The record does not evidence extreme hardship in the event that the applicant's spouse relocates to Brazil or in the event that she remains in the United States without the applicant. 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. Therefore, the applicant's spouse will face the common problems associated with separation from a spouse if she remains in the United States.

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 AAO notes that 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 endure hardship as a result of separation from the applicant and is sympathetic to her situation. However, her 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.

The AAO notes that 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(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.