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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE:

[REDACTED]

Office: BOSTON, MA

Date:

APR 26 2007

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 read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Boston, Massachusetts, 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 (U.S.) 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 into the United States by fraud or willful misrepresentation on December 13, 1999. The applicant is married to a naturalized U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the record did not establish that the applicant's spouse would suffer extreme hardship if she were removed from the United States. He denied the application accordingly. *Decision of the District Director*, dated August 23, 2006.

On appeal, counsel states that the district director erred in determining that the record failed to support a finding of extreme hardship, applying an improper standard to assess extreme hardship and considering only a few of the many factors raised by the applicant's spouse. Counsel also contends that the director dismissed the few factors he did consider without proper consideration and failed to take into account the totality of the harm to the applicant's spouse. Counsel submits a brief and documentation not previously considered.

The record indicates that on July 13, 2005, the applicant filed the Application to Register Permanent Residence or Adjust Status (Form I-485) based on the Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse, [REDACTED]. At her adjustment interview on June 12, 2006, the applicant testified under oath that she entered the United States as a B-2 visitor on December 23, 1999 by presenting a fraudulent passport and visitor's visa in the name of [REDACTED]s. Accordingly, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, the only qualifying is Mr. Dura, the applicant's spouse. Hardship the alien herself experiences or that is felt by other family members as a result of separation is not considered in section 212(i) waiver proceedings, except as it affects 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined 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 set forth a list of non-exclusive factors relevant to determining 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 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 age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, 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).

The AAO notes that extreme hardship to Mr. [REDACTED] must be established in the event that he resides in Brazil or in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO now turns to a consideration of the relevant factors in this case.

The record includes the following evidence to establish the applicant's claim that Mr. [REDACTED] would suffer extreme hardship if she were to be removed from the United States: counsel's brief, dated September 25, 2006; statements, dated June 12 and September 25, 2006 from Mr. [REDACTED]; statements from the applicant's step-son and step-daughter; a psychiatric evaluation of the applicant, dated September 17, 2006; letters in support of the applicant's waiver request from friends, the pastor of the applicant's church and the guidance counselor at the high school attended by the applicant's step-son; and country conditions information on unemployment in Brazil:

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Brazil. In his brief, counsel asserts that Mr. [REDACTED] would suffer emotionally and financially as a result of relocating to Brazil. Reiterating the statements of the applicant's

spouse, counsel notes that moving to Brazil would separate Mr. [REDACTED] from his U.S. citizen children, leaving his sons alone without a caring home and his daughter without the support she needs as a new mother. He would also lose his close relationships with his church, community and friends. Moreover, Mr. [REDACTED] would have to close his landscaping business and seek employment in Brazil, where because of his age, lack of education and without a profession, he would be unable to find employment. The loss of income from his U.S. business and lack of employment opportunities in Brazil, counsel asserts, would leave Mr. [REDACTED] without an income to provide for himself, the applicant, his children or his elderly mother. Counsel also contends that, as a gypsy, Mr. [REDACTED] would face discrimination like that he suffered during his Brazilian childhood. Further, he would be at risk from the applicant's ex-husband who now in jail has threatened to harm both the applicant and Mr. [REDACTED].

In support of his and Mr. [REDACTED]'s claims regarding the impact of the applicant's removal, counsel has submitted a psychiatric evaluation of the applicant, prepared by [REDACTED], an Advanced Practice Registered Nurse and Psychiatric Clinician. This evaluation, dated September 17, 2006, is based on a two hour interview between Ms. [REDACTED] and the applicant, which took place on September 14, 2006. Based on this interview, Ms. [REDACTED] concludes that, as a result of abuse at the hands of her father and her ex-husband, the applicant meets the psychiatric criteria for major depression, chronic and severe, and post traumatic stress disorder, chronic. She further states that if Mr. [REDACTED] moves to Brazil with the applicant he would have to provide care for his wife, who would be retraumatized by a return to Brazil, and would be confronted by medical and psychological bills that would be "immense" at a time when he would have lost the income from his U.S. business. Ms. [REDACTED] also notes that the applicant is undergoing medical treatment for severe abdominal pain, diagnosed as endometriosis, and that it would be more difficult to receive adequate medical care in Brazil. She contends that the applicant's return to Brazil would result in a premature and abrupt halt in the medical treatment that the applicant is currently undergoing in the United States.

Although the input of any mental health professional is respected and valuable, the AAO finds the submitted evaluation to have little evidentiary weight, being based on a single interview with the applicant. The conclusions reached do not reflect the insight and detailed analysis that an established relationship with a mental health professional would provide, rendering them speculative and diminishing the evaluation's value. The AAO also notes that neither the statements made by Ms. [REDACTED] regarding the costs and inadequacies of Brazilian medical care nor those related to the applicant's diagnosis and medical treatment for endometriosis are supported by documentary evidence. Accordingly, the AAO does not find the record to establish the status of the applicant's mental or physical health, or the impact that a return to Brazil would have on her health. Moreover, as previously noted, hardship suffered by the applicant upon removal is not considered in waiver proceedings, except as it affects the qualifying relative.

In her evaluation of the applicant, Ms. [REDACTED] asserts that Mr. [REDACTED] would suffer extreme hardship if he relocated to Brazil based on her conclusion regarding the impact of a return to Brazil on the applicant's emotional and physical well-being and his separation from his family in the United States. She also states that Mr. [REDACTED] "scored high" in a screening for Seasonal Adjustment Disorder (SAD) and that there is no treatment for SAD in Brazil. However, Ms. [REDACTED] evaluation of the applicant is not supplemented by any evidence that would support her assessment of the effect of relocation on Mr. [REDACTED]; the record does not indicate that she has had contact of any type with him. Neither does the record document the SAD screening that Ms. [REDACTED] states was administered to Mr. [REDACTED] its findings, or the absence of SAD treatment in

Brazil. Going on record without supporting documentation will not meet the burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Similarly, the AAO also finds no support in the record for counsel's assertions regarding Mr. [REDACTED] unemployability in Brazil, the discrimination he would face in Brazil as a gypsy or the risk to him from the applicant's former husband. Although it notes the materials submitted on Brazilian unemployment, this general information does not demonstrate that the applicant and her spouse would be unable to find employment in Brazil. With regard to the treatment of gypsies in Brazil, now or in the past, the record is silent. There is also no proof of any type that the applicant's ex-husband poses a threat to the applicant or Mr. [REDACTED]. Without supporting documentation, the assertions of counsel will not meet the applicant's burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Despite these deficits, the AAO nevertheless finds the evidence of record sufficient to establish that relocation to Brazil would constitute an extreme hardship for Mr. [REDACTED] based on the cumulative impact of his separation from his children, other family members, his church and community, and the loss of his business.

The second part of the analysis requires the applicant to establish extreme hardship in the event that Mr. [REDACTED] remains in the United States. Counsel contends that were Mr. [REDACTED] and the applicant to be separated, he would not only lose the close relationship he has with his wife, but that their hopes and dreams for the future would be destroyed, including their plans to expand their family. Counsel also notes that without the applicant, Mr. [REDACTED] would not be able to provide the same quality of parenting for his children and that oldest son would probably drop out of school. He also contends that in assuming his wife's duties, that Mr. [REDACTED] close relationship with his church, community and friends would suffer. Mr. [REDACTED], counsel asserts, would constantly worry about the applicant's safety and mental health in Brazil because of her past history of abuse. He would be faced with significant medical bills because of the effect that a return to Brazil would have on the applicant's mental health and, at the same time, have to support two households. Counsel also indicates that the applicant's removal would negatively affect Mr. [REDACTED]'s business, reflecting Mr. [REDACTED]'s statements that running his business without his wife's help would be difficult. Mr. [REDACTED] also states that the absence of the applicant would be even harder to bear during the winter months when he suffers from depression.

While the AAO acknowledges that the applicant's removal would result in emotional hardship to the applicant, the record provides no evidence that establishes the effect of their separation on Mr. [REDACTED]'s emotional or physical health. Although Mr. [REDACTED] indicates he suffers from depression that would be exacerbated by his wife's absence, there is no evaluation of Mr. [REDACTED]'s mental health in the record. In her psychological evaluation of the applicant, [REDACTED] states that because Mr. [REDACTED]'s relationship with the applicant is so strong, separation from her would cause him to suffer unbearable strain. She further posits that as Mr. [REDACTED] has SAD, he would suffer enormous difficulty during the winter months in the applicant's absence. As previously noted, however, the psychological evaluation in the record is of the applicant, not Mr. [REDACTED]. It does not offer a basis for Ms. [REDACTED]'s conclusions regarding Mr. [REDACTED]'s mental health were the applicant to be removed. As previously discussed, Ms. [REDACTED]'s assertion that Mr. [REDACTED] has tested positively for SAD is not documented, nor is her conclusion that he would suffer greatly during the winter months supported by any documentary evidence. Accordingly, the record does not establish

that the emotional hardship faced by Mr. [REDACTED] would exceed that normally faced by the spouses of removed individuals.

The AAO also notes Mr. [REDACTED] concern about becoming a single parent and having to care for his son and support his daughter in dealing with first-time motherhood. It acknowledges that the quality of care that Mr. [REDACTED] would provide to his children might not equal that which could be offered by two parents. However, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. Neither is the reduced amount of time that Mr. [REDACTED], as a single parent, would have to maintain his personal connections to his church, community and friends.

With regard to the additional costs and anxiety that counsel indicates would be created for Mr. [REDACTED] by the applicant's return to Brazil, the AAO finds the record, as previously discussed, to contain insufficient evidence to establish that the applicant would be at risk in Brazil from her ex-husband or that she suffers from mental or physical health problems that would be exacerbated by a return to Brazil. Moreover, the record does not demonstrate that the applicant upon return to Brazil would be unable to find employment and thereby reduce the financial burden of her return to Brazil on Mr. [REDACTED]. Although counsel and Mr. [REDACTED] indicate that his business would be negatively affected by the applicant's removal, the record does not indicate how the applicant is involved in Mr. [REDACTED] landscaping business and, therefore, how her removal would affect its operations.

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 record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were removed from the United States. Rather, the record demonstrates that Mr. [REDACTED] would experience the distress and difficulties routinely created by the removal of a spouse removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

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 removal from 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.