

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

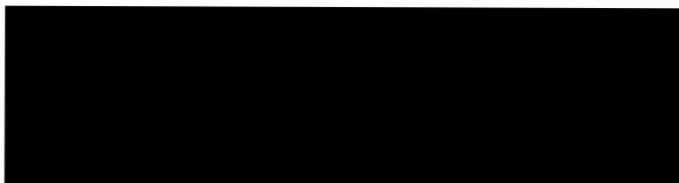
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

tl2

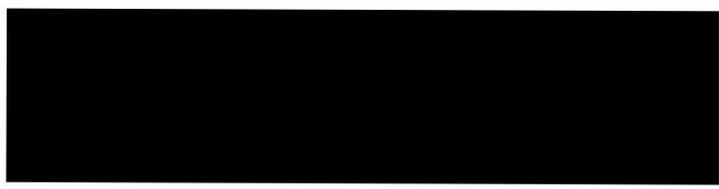


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **APR 15 2008**

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:



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 Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Brazil, 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant is the spouse of a United States citizen, and 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 his wife.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed on his wife, the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. On appeal, counsel contends that the applicant's wife would suffer extreme hardship if the applicant were required to return to Brazil. The entire record was reviewed and considered in rendering a decision on the appeal.

Regarding the applicant's grounds of inadmissibility, the record establishes that the applicant entered the United States, fraudulently, by presenting the passport and tourist visa of another person in order to gain entry. Thus, the applicant entered the United States by making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States. Accordingly, the applicant was found to be 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). The applicant does not dispute his inadmissibility; rather, he is filing for a waiver of his inadmissibility.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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:

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 a 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 applicant himself experiences upon denial of the application is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. 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 applicant is required to demonstrate that his wife would face extreme hardship in the event the waiver application is denied, regardless of whether she joins him in Brazil or remains in Massachusetts without him.

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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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 United States 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. In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted), the BIA held that:

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.

The record reflects that the applicant’s wife is a thirty-year-old citizen of the United States. She and the applicant have been married since September 18, 2004. They have one daughter, born October 23, 2005, who is a citizen of the United States.

The record contains three joint affidavits executed by the applicant and his wife. In their first affidavit, dated October 27, 2004, the applicant’s wife states that the applicant is a wonderful man who made a mistake; that he knows it was a mistake; that the applicant is a person of good moral character; that the applicant takes care of her and she takes care of the applicant; that the applicant is attentive and involved; that she does not know what she would do if the applicant were required to depart the United States; that the applicant is her world; that she has difficulty sleeping and is very upset; and that they hope they can put this situation behind them.

In their second affidavit, dated November 7, 2005 affidavit, the applicant’s wife states that the applicant is a wonderful husband, but that he made a mistake; that she would face extreme hardship if the applicant were required to depart the United States; that she will not be able to work because the couple has a new baby; that they need the applicant in the United States; that the applicant would not earn enough money in Brazil to support them; that she cannot travel to Brazil with the applicant because the applicant would not

be able to earn enough money to support the family there, either; that she does not speak Portuguese, and would be unable to work; and that their happiness at the birth of their daughter has been overshadowed with worry about keeping the family together. The applicant states that he knows his fraudulent entry into the United States was a mistake; that he now realizes he put his future with his family at risk; and that, if the waiver applicant is approved, he swears that he will make the United States proud. He also asks that he be allowed to remain in the United States to stay and raise his family here.

In their third affidavit, dated April 5, 2006 affidavit, the applicant's wife states that the hardship she would face if the applicant were required to return to Brazil would be beyond imagination; that the applicant is a good person and a hard worker; that the applicant loves the United States; that she and the applicant are deeply in love; that the applicant is a wonderful husband and father; that the applicant is incredibly giving and caring; that the applicant's departure from the United States would rip the family apart; that she and their daughter cannot move to Brazil; that she has spent a great deal of time and money investing in her career as a dental assistant; that she would be unable to find a job in Brazil, as she does not speak Portuguese; that she could not move to Brazil because she relies upon the high quality of medical care in the United States; that she was diagnosed with pre-cancerous cells in her uterus, which had to be removed; that cancer runs in her family and she depends upon preventive care; that she had gestational diabetes when she was pregnant; that she suffers from asthma; that the thought of the applicant moving to Brazil is devastating; that she relies upon the applicant for everything; that it is unfair to remove her partner in raising their child; that the challenges facing single mothers are steep; and that she thought deportation was reserved for criminals and terrorists. The applicant states that he made a mistake; that it was wrong to violate the laws of the United States; and that he regrets his actions.

In their October 12, 2005 letter, the applicant's wife's parents state that she would be a single parent if the applicant were removed from the United States, and that she would have to file for Massachusetts low-income housing and other financial assistance through the state's welfare system. They state that the applicant is a good provider, and that the applicant's return to Brazil would devastate the family.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

As noted previously, the applicant is required to demonstrate that his wife would face extreme hardship in the event the applicant is required to return to Brazil, regardless of whether she joins him in Brazil or remains in Massachusetts without him. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 wife will face extreme hardship if the applicant is required to return to Brazil. The record does not demonstrate that she faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. As presently constituted, the record fails to establish that the financial strain and emotional hardship she would face would be greater than that normally to be expected upon separation. The costs, both financial and emotional, of separation and the maintenance of two households are faced by everyone in the applicant's wife's situation, and the record fails to establish that the hardships she would face would be greater than those faced by others facing the deportation of a spouse. The record reflects that the applicant's wife is a trained dental assistant. The applicant has not established that his wife would be unable to support herself and their child by working in her field. While the applicant's wife states that she would experience extreme hardship as a result of becoming a *de facto* single mother, the AAO notes that such is a common experience in cases involving the deportation of a husband. Again, the record fails to establish that she would suffer greater hardship than that faced by others in her situation. Although CIS is not insensitive to her situation, the record as it currently stands does not establish that the hardship the applicant's wife would experience if the waiver were denied rises to the level of "extreme" as contemplated by statute and case law.

Nor has the applicant established that his wife would face extreme hardship if she joins him in Brazil, as the record fails to demonstrate that she would face hardship beyond that normally faced by others in her situation. Diminished standards of living and cultural adjustment are to be expected in the applicant's wife's situation. Although counsel and the applicant's wife discuss her medical concerns (asthma, gestational diabetes, and prior surgery to remove pre-cancerous cells), the record contains nothing from a treating physician indicating the prognosis or any follow up procedures that may be required. Nor does the record establish that she would be unable to manage these conditions in Brazil. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his United States citizen wife would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. As noted previously, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. **The applicant has sustained not that burden.** Accordingly, the AAO will not disturb the Director's denial of the waiver application.

**ORDER:** The appeal is dismissed. The waiver application is denied.