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U.S. Citizenship
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Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date DEC 10 2008

IN RE:

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and he is seeking 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 U.S. citizen spouse and child.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on his spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, at 4, dated July 26, 2006.

On appeal, counsel asserts the director failed to adequately consider hardship to the applicant's spouse. *Form I-290B*, received August 21, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statement, the applicant's spouse's medical records, the applicant's financial bills and a psychological evaluation of the applicant's family. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant applied for admission to the United States with a fraudulent U.S. nonimmigrant visa on November 17, 1996 and was ordered excluded and removed from the United States on November 18, 1996. The same day, he was returned to Brazil. The applicant subsequently re-entered the United States without inspection on February 1, 1997. As a result of his prior misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) 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.

A section 212(i) waiver 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. The AAO notes that hardship to an applicant's child is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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 deems relevant in determining whether an alien has established extreme hardship. 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Brazil or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Brazil. The record reflects that the applicant's spouse's mother and eight siblings reside in Brazil. *Psychological Evaluation*, at 7, dated September 20, 2006. The applicant states that his family has no assets in Brazil, no place to live and they do not have the financial resources to live in Brazil. *Applicant's Statement*, undated. The record indicates that the applicant and his spouse attempted to live in Brazil in 1995, but their plan failed due to the economy. *Psychological Evaluation*, at 11. The psychologist states that it would be nearly impossible for the applicant's spouse to find employment in Brazil due to the poor economic conditions and the youth-oriented Brazilian job market. *Id.* at 18. However, the record does not include any supporting evidence of country conditions in Brazil, particularly in regard to the economic situation. Going on record without supporting documentation will not meet the applicant's 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)).

Counsel states that the thought of returning to Brazil with the applicant and their daughter causes severe anxiety to the applicant's spouse. *Brief in Support of Appeal*, at 5, dated September 18, 2006. The psychologist who evaluated the applicant's spouse states that moving to Brazil would create undue psychological hardships and extreme emotional hardships for the entire family, it would create a cascade of traumatic psychosocial losses for all three family members and this would trigger a further exacerbation of depressive illness in both parents and the onset of childhood depression in their daughter. *Psychological Evaluation*, at 3-4. The psychologist notes the applicant's spouse's family history of depression, alcohol abuse and suicide. *Id.* at 8. The psychologist states that an initial episode of depression is triggered by a significant relationship loss and/or other significant life stress. *Id.* at 23. The psychologist states that the applicant's spouse suffered an episode of major depression when she was separated from the applicant in the

past and she is suffering a second more debilitating episode now, as well as experiencing symptoms associated with anxiety disorder and panic attack. *Id.* at 1-3, 15. The applicant's physician states that the applicant's spouse has had a very difficult time with depressive symptoms that last two months. *Letter from [REDACTED] M.D.*, dated September 13, 2006. Counsel states that the same doctor has been treating the applicant's spouse for quite some time, is familiar with her condition, and it would be difficult if not impossible for her to establish the same relationships with new doctors in Brazil. *Brief in Support of Appeal*, at 5. Although the submitted mental health evaluation is based on a single interview with the applicant's family, the AAO notes that the conclusions reached by the psychologist concerning the applicant's spouse are supported by the conclusions of the applicant's own physician who indicates that the applicant's spouse is under such stress that her resulting depressive symptoms have required her to take time off from work to focus on her health. *See Letter from [REDACTED] M.D.* A medical examination conducted by the applicant's spouse's physician on September 13, 2006, a week before the psychological evaluation, diagnoses the applicant's spouse with dysthymic disorder. *Progress Note Report*, dated September 13, 2006.

Counsel states that the applicant and his spouse would earn less money in Brazil, their daughter would have an inferior education, these thoughts are extremely stressful to the applicant's spouse and the stress manifests itself in physical ailments that must be treated with medication. *Id.* Counsel states that the applicant's spouse's lack of health coverage indicates that she would not have access to necessary medical care in Brazil. *Id.* Counsel states that the applicant's spouse is very distressed at the thought of preventing her daughter from taking advantage of every opportunity available to her in the United States. *Id.* at 9. The record reflects that the applicant's spouse is an active member of Missionary Assembly of God Church and a singer on the worship team, and that her daughter also sings with the church. *Letter from [REDACTED]s*, dated July 4, 2008.

Based on the totality of the above factors, the AAO finds that the applicant's spouse would suffer extreme hardship if she resided in Brazil permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse is suffering from anxiety attacks and depression at the thought of life without her husband, she has difficulty sleeping, she suffers from severe migraines, the prospect of the applicant leaving aggravates her migraines and due to extraordinary amounts of stress she was forced to take time off of work. *Brief in Support of Appeal*, at 4-5. The applicant's spouse's physician states:

She has been very tearful and states everything hurts. She has no appetite – relates has not eaten anything today. She is not able to focus on anything and is often irritable and avoids people. Her sleep has been poor – she reports early morning awakening and cried almost all of last night. *Progress Note Report from [REDACTED]s, M.D.*, dated September 13, 2006.

Counsel states that the applicant's spouse obtains her health insurance through the applicant, she is able to get treatment for her migraines and inability to sleep with her health insurance, and she would not be able to afford health coverage for herself and her daughter. *Brief in Support of Appeal*, at 6. The applicant's spouse's psychological evaluation reflects that the applicant's spouse suffered an episode of major depression when she was separated from the applicant in the past, she is suffering a second more debilitating episode

now, and is also experiencing anxiety disorder and panic attack. *Psychological Evaluation*, at 1-3, 15. If separated from the applicant, the applicant's spouse will be at risk for further exacerbation of her already debilitating major depressive illness. *Id.* at 20. Counsel states that the applicant and his spouse have been married for 13 years. *Id.* Counsel states that the applicant's spouse would be subjected to an unbelievable amount of pressure without the applicant's income and assistance in raising their daughter as she works long hours and cares for their daughter. *Id.* at 9.

Based on the totality of these factors, the AAO finds that the applicant's spouse would suffer extreme hardship if she were permanently separated from the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The main adverse factors in the present case are the applicant's misrepresentation, unauthorized employment, unauthorized stay, entrance without inspection and inadmissibility under section 212(a)(9)(A)(i) of the Act .

The favorable factors include the presence of the U.S. citizen spouse and child, lack of a criminal record, extreme hardship to the applicant's spouse and letters of support for the applicant, which describe him as a responsible and dedicated employee, a man of character and integrity, and a loving husband and father.

The AAO finds that the misrepresentation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.



ORDER: The appeal is sustained.