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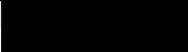
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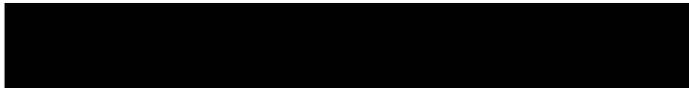


Office: LIMA, PERU

Date: **JAN 25 2008**

IN RE:

Applicant:



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 Officer-in-Charge (OIC), Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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 seeking admission into the United States by fraud or willful misrepresentation; and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant sought a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, which the OIC denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the OIC*, dated January 23, 2006. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to 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.

The applicant's affidavit conveys that she was granted a B2 visa, and that she used the visa to enter the United States in 1995. While in the United States, the applicant states that she studied English at New England School of English and worked and that she departed from the country in 1998. The applicant stated that on May 5, 1998, she "lied at the border to get a B2 visa in order to come back to the United States." The applicant states that she "had to go back to the love of my life, to my church, to my friends, to the new life I had found . . ." The AAO finds that the documentation in the record supports the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for gaining admission into the United States by fraud or willfully misrepresenting a material fact to immigration officials.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

¹ Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

² See DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The documentation in the record reflects that the applicant entered the United States in August 1995 with a B-2 tourist visa authorizing a six-month period in the United States; the applicant did not depart from the country until April 1998, at which time she accrued one year of unlawful presence. When the applicant departed from the country, she triggered the ten-year-bar. It is noted that the applicant separately accrued unlawful presence after she returned to the United States one month later in May 1998, remaining beyond her authorized period of stay, until October 2002.

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(a)(9)(B) of the Act provides that:

- (v) Waiver. – The Attorney General [now Secretary, Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and her child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is Mr. Saulo Sampaino, the applicant’s naturalized citizen 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 record contains income tax records, a marriage certificate, birth certificates, photographs, invoices, letters, medical records, bank transaction statements, information about Brazil and medications, and other documents. The AAO has carefully considered all of the documentation in the record in rendering this decision.

On appeal, counsel states that the applicant and her daughter have been separated from [REDACTED] for three years. Counsel states that [REDACTED] has suffered emotional hardship on account of the separation and that his ability to function has been affected. She states that [REDACTED] has sought psychiatric treatment; has fallen behind in bill payments, causing his house and fifteen-year-old business to be in jeopardy; and has lost profits, customers, and business opportunities. Counsel conveys that [REDACTED] suffers from a rash, significant hair loss, and abdominal pains for which several endoscopic procedures were performed. She states that the abdominal condition is stress-induced and has not subsided with medical treatment and that **doctors have stated that he may have to undergo surgery.** Counsel indicates that [REDACTED] takes medication to control the rash and hair loss. Counsel states that [REDACTED] blames himself for not being able to provide for his wife and daughter while they are in Brazil. She states that [REDACTED] has been diagnosed with major depressive disorder. Counsel states that if [REDACTED] lived in Brazil, there would be almost no demand for carpentry, his trade, and that [REDACTED]'s age would make him unemployable. She states that if [REDACTED] were to leave the United States the financial impact would affect his business partners and associates, employees, community, and others. Counsel indicates that [REDACTED]'s family members who live in Brazil cannot provide financial assistance and that [REDACTED] has been financially supporting his and his wife's family. She states that [REDACTED] has lived in the United States for 17 years. Counsel asserts that the OIC misread the record and failed to consider the evidence regarding the applicant's attempt to legalize her status. Counsel states that *Matter of Uy*, 11 I&N Dec. 159 (BIA 1965), indicates that duration of stay in the United States, along with other substantial equities could establish extreme hardship, which counsel claims are the facts of the instant case.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The content of [REDACTED]'s affidavit, dated February 17, 2006, is summarized in the appeal brief, except for the following statements made in the affidavit. [REDACTED] indicates that he often talks to his daughter by phone. He states that he and his wife are devout Baptists and that his faith is being tested and he has turned to his pastor for support. [REDACTED] conveys that he is no longer actively involved in his church and that he is suffering dire financial hardship. He states that it would be emotionally difficult to abandon his carpentry business and that he could not manage it from afar. He states that his wife had greatly helped him with his business. He states that the quality of his work and his performance has suffered because he is mentally distracted, and that he feels that he is close to losing his sanity. He states that his five-year-old daughter has been having seizures during the night due to stress. [REDACTED] states that education in Brazil is inferior to that which is offered in the United States, and that Brazil is an unsafe country.

The affidavit dated February 21, 2006 of [REDACTED] conveys that she is no longer able to help her husband. She states that her husband's and daughter's health has been affected by their separation. She states that her daughter has been having night-time convulsions, and that she wakes up at night screaming and biting her tongue. [REDACTED] states that the convulsions are controlled by daily intake of gardenal, and that her daughter's brain is monitored and scanned annually to determine whether the condition has worsened; she indicates that they would like her daughter to be examined by American doctors. [REDACTED] states that her husband believes their daughter's condition is caused by his absence and that he blames himself for the convulsions. She states that supporting two households and traveling to Brazil has been a burden and that she has not been able to find employment in Brazil. She states that her daughter cannot be far away from her.

The evaluation of [REDACTED] by [REDACTED] LICSW, states that [REDACTED] emotional distress is situational, exclusively associated with separation from family. [REDACTED] diagnosed Mr. [REDACTED] with Major Depressive Disorder 296.33 (Severe, Recurrent without psychotic features).

The letters from the [REDACTED]'s church, First Brazilian Baptist Church of Greater Boston, conveys the need for the [REDACTED] family to be together. Letters from friends describe the applicant's character and how it has been impacted by separation. The letter from [REDACTED] conveys that [REDACTED]'s ability to focus on his work has been impaired on account of separation from his wife and daughter. He states that Mr. [REDACTED]'s business has suffered and that [REDACTED] was forced to sell a property in Newton at a great loss.

The income tax records show business income of \$52,320 for 2004, and \$48,500 for 2003.

The record contains invoices showing past due payments.

The translation of the conclusion of the digital EEG from Santa Monica Hospital in Brazil states:

Digital EEG without cerebral chart computerized slightly abnormal in function of the chronological age, showing rhythm Delta and theta at the high voltage at the round areas and posteriors with slight dominance at the left side of the cerebral hemisphere.

The AAO notes that the document is signed by [REDACTED], and is signed June 28, 2004.

The medical certificate dated November 19, 2002 indicates that the [REDACTED]'s daughter was prescribed Forten and Gardenal (drops) by [REDACTED]

The medical examination of [REDACTED] performed in Brazil in 2005 states that “[m]edical examination was performed with good tolerances, we found the esophagus with caliber, mobility and elasticity within of [sic] normal limits.” It states that the mucous “is normal aspect in all of its parts.” The medical record dated April 29, 2005 states that [REDACTED] is prescribed Pantoprazol and Digesan and is required to wash his face three times a day.

The birth certificate in the record shows the [REDACTED]'s daughter as born on June 18, 2000.

The record fails to establish that the applicant’s husband would endure extreme hardship if he remains in the United States without her.

[REDACTED] states that the income from his business has declined and that he is no longer able to meet household expenses on account of separation from his family. However, the income tax records for 2003 and 2004 and the submitted invoices from Citi Aadvantage World MasterCard, City of Everett, Nextel, Option One Mortgage, and the Funds Notice from Citizens Bank are insufficient to establish that [REDACTED] is unable to meet household expenses. [REDACTED] has not provided evidence of all of his monthly expenses and his present income in order to demonstrate that he is no longer able to meet household expenses. 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)). It is noted [REDACTED] is shown as a painter, not a carpenter, in the tax records and in his marriage certificate; and the Citizen’s Bank Funds Notice reflects that his business is known as [REDACTED]

With regard to the evaluation presented, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant’s spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and [REDACTED] or any history of treatment for the major depressive disorder experienced by Mr. [REDACTED] since his separation from his wife and daughter. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED]’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship.

[REDACTED] is very concerned about separation from his wife and daughter. Courts in the United States have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, U.S. courts have held that the fact that an alien has a U.S. citizen child is not sufficient, in itself, to establish extreme hardship. As stated in *Matter of Correa*, 19 I&N Dec. 130, 134 (BIA 1984), “it is well settled that the birth of children in the United States by itself does not constitute a prima facie case of extreme hardship.” In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit in *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977), found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit found that an alien who is illegally within this country cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA’s finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant’s husband is very concerned about separation from his wife and daughter. [REDACTED] states that he has a rash, hair loss, and stomach pain on account of separation from his family and the record reflects that he was prescribed medication. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant’s husband, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as defined by the Act. The record before the AAO is insufficient to show that the emotional hardship experienced by the applicant’s husband is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

It is noted that [REDACTED] indicates that her husband blames himself for their daughter’s seizures. The AAO finds that the submitted medical records of the [REDACTED]’s daughter fail to show that she has an ongoing health problem as the digital EEG dates to 2004 and the medication (Forten and Gardenal) were prescribed in November of 2002 and no current medical records of her condition were submitted on appeal. 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)).

The present record is insufficient to establish that the applicant’s husband would endure extreme hardship if he joined the applicant in Brazil.

The conditions in Brazil, the country where [REDACTED] would live if he joins his wife, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do

not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

As previously stated, the AAO finds that the submitted medical records do not establish that [REDACTED] or his daughter has an ongoing serious health condition; thus, the information pertaining to the healthcare in Brazil fails to establish extreme hardship to [REDACTED] in the event that he joined the applicant in Brazil.

Counsel asserts that [REDACTED] will not find employment in Brazil in carpentry and in support of this assertion the record contains information about Brazil. The AAO finds that article about earnings in Brazil from the Library of Congress Country Studies is outdated, relating to earnings in 1990, and therefore carries little weight. The Bureau of Western Hemisphere Affairs December 2005 report on Brazil reflects a per capita gross domestic product of \$3,320; this report, however, fails to provide specific information relevant to the circumstances of [REDACTED]. “General economic conditions in an alien's native country will not establish “extreme hardship” in the absence of evidence that the conditions are unique to the alien.” *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted).

Furthermore, decisions have shown that difficulties in securing employment and the hardships that are a consequence of this such as a lower standard of living and health care are insufficient to establish extreme hardship. *See, e.g., Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986) (Even a significant reduction in the standard of living is not by itself a ground for relief); *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980) (upholding the BIA’s finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach “extreme hardship”); *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship); and *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir.1982) (claim by respondent that he had neither skills nor education and would be “virtually unemployable in Mexico” found insufficient to establish extreme hardship)(“It is only when other factors such as advanced age, illness, family ties, etc., combine with economic detriment that deportation becomes an extreme hardship”). The loss of a job along with its employee benefits is not extreme or unique economic hardship, but is a normal occurrence when an alien is deported. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985).

Although the submitted country report on human rights practices in Brazil for 2004 describes social issues and human rights violations, it is insufficient to substantiate the claim that the [REDACTED] family would be in danger in Brazil as the applicant presented no evidence of specific incidents of threats or violence directed against her, her daughter, or any of her family living 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)).

[REDACTED] states that he would have to leave the country where he lived for 17 years if he joined the applicant in Brazil. The AAO recognizes that [REDACTED]’s adjustment to the culture and environment in Brazil would be difficult; but these difficulties will be mitigated by the moral support of his wife and other family members, which are his family ties to Brazil.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the

cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The record fails to support a finding of significant hardships over and above the normal economic and social disruptions involved in removal so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under sections 212(i) and 212(a)(9)(B)(v) of the Act.

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 sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.