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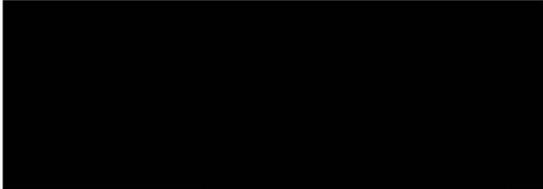
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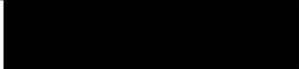
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FILE:



Office: LIMA Date: DEC 26 2006

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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 Officer in Charge, Lima, Peru, denied the waiver application, and it 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 212(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant is the spouse of a naturalized U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 5, 2005.

The record reflects that, in June 1986, the applicant entered the United States without admission. The applicant remained in the United States. On March 17, 1999, the applicant married her spouse, [REDACTED]. On October 21, 1999, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. In January 2001 the applicant returned to Brazil where she has since resided. On December 17, 2001, the Form I-130 was approved.

On June 25, 2004, the applicant applied for an immigrant visa based on the approved Form I-130 and she later filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant had a good reason to return to Brazil and that the waiver should be granted on account of the emotional suffering the applicant's spouse has endured since their separation in 2001. *See Applicant's Brief* dated July 18, 2005. In support of these assertions, counsel submitted only the above-referenced brief and copies of documentation previously provided. The entire record was reviewed and considered in rendering a decision in this case.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of 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.

The officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to unlawful presence in the United States. Counsel does not contest the officer in charge's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. It is noted that Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing section 212(a)(9)(B)(v) extreme hardship. Therefore, hardship to the applicant's children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 at 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. 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 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).

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 reflects that [REDACTED] is a native of Brazil who became a lawful permanent resident in 1992 and a naturalized U.S. citizen in 1996. The applicant has a 24-year old daughter and a 23-year old son from a prior

relationship who are both natives and citizens of Brazil. The applicant's daughter resides in the United States with [REDACTED]. There is no evidence in the record to suggest that the applicant's adult children have any legal status in the United States. The applicant and her spouse have no children together. The applicant and [REDACTED] are in their 40's and there is no evidence that [REDACTED] has any health concerns.

Counsel contends that the officer in charge's reliance on *Perez v. INS*, 96 F. 3d 390 (9<sup>th</sup> Cir. 1996), which held that extreme hardship is hardship that is unusual or beyond that which would normally be expected upon deportation, and other precedent decisions cited in the officer in charge's decision, fail to truly consider the effects of spouses being separated from each other. Counsel asserts that, to adhere to the holdings of the cited precedent cases would effectively eliminate the ameliorative effect the waivers were expected to have, to forgive an alien for a wrong they may have committed, and that, in holding to these precedents only aliens whose spouses or children had a serious illness would receive waivers. Finally, counsel contends that, in adding extreme hardship to the statute, this is surely not the result which Congress intended and it would defeat the primary purpose of U.S. immigration law, which is to ensure family unity. Counsel's assertions are unpersuasive. The AAO finds that the officer in charge applied appropriate precedent decisions to the instant case in determining whether the applicant had established that a qualifying family member would suffer extreme hardship and that they reflect Congress' intent in adding extreme hardship to the statute.

In his affidavit, [REDACTED] states that he needs his wife near him because he is a hardworking man who feels lonely when he returns from work and he does not see his wife waiting for him. He states that his wife is suffering from depression and his step-daughter is suffering from the separation. He states that he travels to Brazil to visit his wife every 2 months, they cry every day on the phone together, and that he needs to have his family close to him so that they can be happy like before the applicant left the United States.

There is no evidence in the record to confirm that [REDACTED] the applicant or the applicant's children suffer from a physical or mental illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] is lonely and his family is separated, this is hardship that is commonly suffered by aliens and families upon deportation.

Counsel and [REDACTED] do not assert that [REDACTED] would suffer extreme hardship if he returned to Brazil. The AAO is, therefore, unable to find that [REDACTED] would experience extreme hardship should he choose to join the applicant in Brazil. Additionally, the AAO notes that, even if counsel had established [REDACTED] would suffer extreme hardship if he accompanied the applicant to Brazil, as a United States 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 and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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 refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is 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 a certain amount of 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 sections 212(a)(9)(B)(v) and 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.