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U.S. Citizenship
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FILE: [REDACTED]

Office: LIMA, PERU

Date: JUN 25 2007

IN RE: [REDACTED]

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:

SELF-REPRESENTED

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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The applicant is a native and citizen of Brazil who, on August 25, 2004, applied for a K-1 nonimmigrant visa as the fiancé of a United States citizen, for the purpose of awaiting the approval of the relative petition and availability of an immigrant visa, pursuant to section 101(a)(15)(K)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(i). The relative petition filed on behalf of the applicant was approved on March 10, 2005. In adjudicating the K-3 nonimmigrant visa, the district director determined that the applicant was inadmissible to the United States under 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 over one year.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her United States citizen fiancé will suffer extreme hardship if she is required to remain in Brazil. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

Regarding the applicant's grounds of inadmissibility, the record reflects that she entered the United States in November 1998, but did not depart until May 2001. She returned to the United States in January 2002 and remained until March 2004. The OIC found that, as she had been unlawfully present in the United States for longer than one year, the applicant had triggered the ten-year bar.

The applicant is now seeking admission within 10 years of her 2004 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than 360 days. The applicant does not contest the OIC's finding of inadmissibility. Rather, she is filing for a waiver of said inadmissibility. The applicant filed the instant Form I-601 on March 18, 2005 at the United States Consulate in Rio de Janeiro, Brazil.

If an alien seeking a K nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

(a) *General*—

(1) *Filing procedure*—

- (i) *Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is available solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse (or fiancé, in this case) or parent. Extreme hardship to the applicant herself is not a permissible consideration under the statute.

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, 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 (9th 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 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. 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.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion favorably to the applicant. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's fiancé is a fifty-eight-year-old citizen of the United States; he has been a citizen since 1970. On the Form I-129F, the applicant's fiancé stated that the couple met at a mutual friend's home in 1998 and have been together since. The applicant's fiancé states that he has three adult children, all of whom are citizens of the United States.

The applicant's fiancé has submitted detailed medical records from the United States Department of Veterans' Affairs which establish that he underwent a hemorrhoidectomy in December 2003 as treatment for anal cancer. According to his testimony, the applicant cared for him during this time. In an undated letter submitted with the Form I-601, the applicant's fiancé stated that he immediately fell in love with the applicant upon meeting her; that he traveled to Brazil to be with her; that she returned to the United States to live with him; that, although they planned to marry, the plans were postponed because the applicant's fiancé's divorce took far longer than anticipated; that during the divorce proceedings he was diagnosed with rectal cancer and that the applicant cared for him; and that he recently had a high "P.S.A. count" and that he must undergo a biopsy and possibly prostate surgery; and that he has postponed the biopsy in the hope the applicant could be with him.

The applicant's fiancé submits an updated (also undated) letter on appeal, in which he states that he has been, and continues to be, under medical supervision for two types of cancer, which must be closely followed by his treating oncologist, urologist, and medical team; that he runs his own business and cannot leave it; that he cannot leave behind his three grown children and his grandchildren, as he is very close to them; that, as a veteran, his medical expenses are fully covered by the Department of Veterans' Affairs, and that such would not be the case in Brazil; that he would not be able to maintain his property if he relocated to Brazil; and that, in his time of need, he is asking the United States to understand his position and allow the woman he loves to join him.

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).

The medical records documenting the applicant's fiancé's medical condition indicate that he is able to function independently without the daily assistance of the applicant. According to the January 28, 2005 entry, he was given the option on that date of a prostate biopsy or continued observation, and that he opted for continued observation. No additional evidence was submitted on appeal, nor is there any statement from a treating physician regarding his condition or his need for assistance from the applicant.

The AAO finds that the applicant's fiancé would experience extreme hardship if he were to join the applicant in Brazil. He has an extensive family network in the United States and a documented need for medical care.

However, 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 fiancé will face extreme hardship if he remains in the United States without the applicant. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a fiancé is refused admission to the United States. Although CIS is not insensitive to his situation, the financial strain of visiting the applicant in Brazil and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. 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. As noted previously, United States 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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 finds that the district director properly denied the waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's fiancé would suffer hardship beyond that normally expected upon a fiancé's refusal of entry into the United States.

The AAO therefore finds that the applicant failed to establish extreme hardship to her United States citizen fiancé as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). The denial of the application for waiver of inadmissibility by the District Director was therefore proper and is affirmed. Accordingly, this appeal will be dismissed.

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