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U.S. Citizenship
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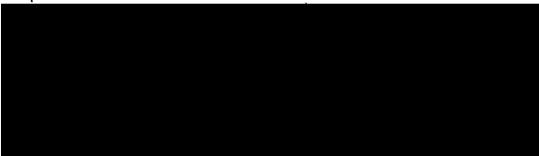
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B) and 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 District Director, San Francisco, CA, and 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. 1182(a)(9)(B)(i)(II), for accruing over one year of unlawful presence and subsequently departing the United States and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and 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) and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The district director concluded that the applicant 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 District Director*, received March 8, 2004.

On appeal, counsel asserts that the applicant has established that her inability to remain in the United States would cause extreme hardship to her spouse. *Form I-290B*, dated April 8, 2004.

The record includes, but is not limited to, counsel's brief, statements from the applicant and her spouse, and photographs. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant used a fraudulent visa to enter the United States on several occasions. As a result of these misrepresentations, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.¹

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

¹ In response to the district director's various claims of misrepresentation, counsel asserts that the immigration inspector who found the applicant inadmissible on March 20, 2000 did not find that she made a misrepresentation, that an agent stamped a fake entry stamp and altered her visa without her knowledge and she never used the altered passport and visa to gain entry into the United States, and that she was complying with the B-2 rules by leaving within the authorized period of stay or applying for an extension. *Brief in Support of Appeal*, at 2-4, dated April 7, 2004. The AAO notes that it appears the alteration to which counsel is referring is the alteration of the "cancelled" notation on her visa, not the photo-substitution of the visa. Although counsel's assertions may have merit, the applicant still used a photo-substituted visa to enter the United States on several occasions which makes her inadmissible.

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, 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 record reflects that the applicant entered the United States without inspection on April 16, 2000. She filed an application to adjust status on October 12, 2001. Therefore she accrued unlawful presence from April 16, 2000, the date she entered, until October 12, 2001, the date she filed for adjustment of status. There is no evidence that the applicant has departed the United States since her last arrival. As the applicant did not depart the United States subsequent to her accrual over one year of unlawful presence, she is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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 a U.S. citizen or lawfully resident spouse or parent of the applicant. 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 pursuant to section 212(i) of the Act. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to the applicant's spouse must be established in the event that he relocates to Brazil or in the event that he remains in the United States, as he 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 her spouse in the event that he relocates to Brazil. Counsel states that the applicant's spouse's forced departure would be made more difficult due to his advanced age, it would be an extreme hardship for him to reestablish a new business and home overseas, and he would be forced to leave his son from a prior relationship. *Brief in Support of Appeal*, at 2. The AAO notes that the record is not clear as to the legal custody arrangement that the applicant's spouse has with the mother of his child and whether his departure to Brazil would violate any custody arrangement. The applicant's spouse states that he established his bakery in 1977, he would have to give up the bakery and he would not have any money to fall back on. *Statement of Applicant's Spouse*, at 3, dated June 20, 2003. The record does not establish that moving to Brazil would prevent the applicant's spouse from continuing to receive income from his bakery. It offers no evidence that the applicant's spouse is the sole employee of the bakery or that it would be impossible for him to hire an individual to perform his duties should he relocate to Brazil. The record does not include evidence of the applicant's spouse's current financial status or that he or his spouse could not obtain employment in Brazil in order to avoid financial hardship. In fact, the record reflects that the applicant previously worked as a psychologist in Brazil. *Applicant's Form G-325A*, dated August 22, 2001. The record does not include evidence of any other factors from *Matter of Cervantes-Gonzalez* or other relevant hardship factors. After a thorough review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to Brazil.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that the applicant assists him with his business and gives him great emotional support. *Statement of Applicant's Spouse*, at 2. The record offers no other evidence of the hardships the applicant's spouse would face if he remained in the United States. The AAO notes that separation entails inherent emotional stress and financial and logistical problems which are common to those involved in the situation. Based on the paucity of the evidence presented, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation

from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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 section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.