

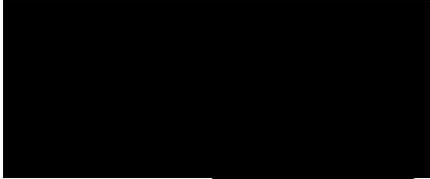
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Services

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FILE:



Office: LIMA, PERU

Date: OCT 16 2007

IN RE: Applicant:



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 waiver application was denied by the Officer-in-Charge (OIC), Lima, Peru. On May 1, 2007, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen or reconsider the denial of the appeal. The motion will be granted. The previous decisions shall be withdrawn and the waiver application will be approved.

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)(9)(B)(i)(II) of the Immigration and Nationality Act (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 section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the OIC denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the OIC, dated July 5, 2005.* The AAO grants the motion to reopen or reconsider the denial of the appeal.

A waiver of inadmissibility under section 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 an applicant is 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(a)(9)(B) of the Act. Thus, hardship to the applicant and her children will be considered only to the extent that it results in hardship to a qualifying relative, who in the present case is the applicant's husband. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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.

"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). As stated by counsel, 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).

On motion, counsel submits additional evidence: a letter dated May 16, 2007 from [REDACTED] a letter dated May 15, 2007 from [REDACTED] Board; a client diagnosis record dated July 23, 1991; a May 24, 2007 letter from [REDACTED], and a document from [REDACTED] describing his relationship with his older son.

The record establishes that the applicant's husband would endure extreme hardship if he remains in the United States without his wife.

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).

The documents submitted on motion establish that the applicant's stepsons have serious long-term psychiatric conditions and that her husband provides primary support for his sons. In addition, the record reflects that the applicant's husband requires mental health treatment. The May 24, 2007 letter from [REDACTED] a licensed psychologist, indicates that the applicant's husband requires mental health treatment. [REDACTED] letter conveys that during his interview with [REDACTED] in 2005, [REDACTED] "acknowledged a prior diagnosis of depression and the use of two psychotropic medications, [REDACTED] states that [REDACTED] "continues to require treatment" and that "with his wife so far away, he lacks motivation or the extra incentive he needs to obtain help and his condition deteriorates."

After a careful consideration of the record, the AAO finds that the situation of [REDACTED] if he remains in the United States without his wife, rises to the level of extreme hardship as defined by the Act as the record reflects that separation from the applicant has impacted [REDACTED] mental health and that the emotional hardship is unusual or beyond that which is normally to be expected upon removal.

The record is sufficient to establish that [REDACTED] would endure extreme hardship if he joined his wife in Brazil.

The documents submitted on motion reflect that [REDACTED] sons have serious long-term psychiatric conditions and that [REDACTED] provides primary support for his sons. The document describing the relationship between [REDACTED] and his older son indicates that he has provided financial and emotional support to his son since 1983. It conveys that [REDACTED] has often had his older son live with him and that during such periods of time his son has been able to maintain steady employment. [REDACTED] indicated that his "older son needs supervision and cannot live on his own." *Psychological Evaluation, dated August 3, 2005*. Since the record reflects that [REDACTED] has provided the primary care of his sons for many years, and continues to provide such care, the AAO finds that the record conveys that [REDACTED] would endure extreme hardship if he were separated from his sons.

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.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met 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 in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's spouse and stepsons and the lack of any criminal convictions. The unfavorable factor in this matter is the applicant's unlawful presence in the United States.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's immigration violation, the AAO finds that the hardship imposed on the applicant's husband and his sons as a result of her inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden

ORDER: The previous decisions of the OIC and the AAO are withdrawn. The application is approved.