

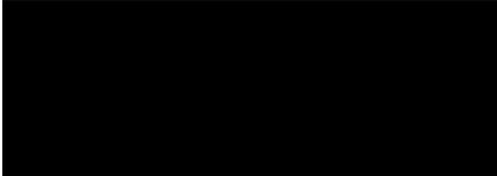
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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
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U.S. Citizenship
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Services

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FILE:



Office: LIMA, PERU

Date:

OCT 22 2007

IN RE:



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

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, Lima, Peru. The matter 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 having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her subsequent departure from the United States. The applicant's spouse is a U.S. citizen and she is seeking a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to a qualifying relative and the Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *Decision of the Officer-in-Charge*, at 3, dated August 31, 2006.

On appeal, the applicant asserts that the officer-in-charge did not adequately assess the degree of hardship her spouse is suffering and will continue to suffer and that this hardship rises to the level of extreme hardship. *Form I-290B*, received September 28, 2006.

The record includes, but is not limited to, the applicant's brief, a psychological assessment of the applicant's spouse, the applicant's spouse's statement, a letter from the applicant's spouse's physician, a statement from the applicant's mother-in-law, a physician's letter for the applicant's mother-in-law, money wire receipts and letters of support for the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant was admitted into the United States with a visitor's visa on April 23, 1998, her period of stay expired on or about October 22, 1998 and she departed in February 1999. The applicant was subsequently admitted into the United States with a visitor's visa on March 25, 1999, her period of stay expired on or about September 24, 1999 and she departed in February 2002.

The applicant applied for admission into the United States on April 26, 2002, she was detained at the Krome Service Processing Center pending a credible fear interview, placed into removal proceedings on May 29, 2002 and granted parole from May 30, 2002 until May 29, 2003. While in proceedings, the applicant applied for asylum on or about December 1, 2002. She withdrew the asylum application on February 8, 2005 and she was ordered removed from the United States on the same date. The record indicates that the applicant left the United States on February 8, 2005.

The applicant accrued unlawful presence from on or about September 24, 1999, the date her previous authorized period of stay expired, until her departure in February 2002. The 10 year bar was triggered by the applicant's departure from the United States in February 2002. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within ten years of her departure from the United States.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. The AAO notes that hardship to a non-qualifying relative is only relevant to the extent it causes hardship to the applicant's 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).

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. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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 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, and in the event that he relocates to Brazil. The AAO notes that the applicant is currently residing in Brazil.

The first 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 he has visited his family in Brazil twice, he is financially unable to visit more often, he has been diagnosed with depression which is directly linked to separation, he is seeking medical and psychological treatment, and his depression has worsened because he

cannot serve in the Naval Reserves. *Applicant's Spouse's Statement*, at 2. The applicant's spouse's physician states that he is receiving therapy and medication, and he is deeply depressed over the applicant's immigration problems. *Letter from* [REDACTED] dated April 5, 2006. The applicant's spouse has seen a psychologist on a regular basis and the psychologist states that the applicant's spouse's symptoms include difficulty sleeping, difficulty concentrating and major depression. *Letter from* [REDACTED] at 1-2, dated October 19, 2006.

The applicant's spouse states that the applicant is unable to find a job in Brazil due to the economy and her lack of a college degree, he provides for both households, he is under emotional strain from supporting two households, he works 50-60 hours a week and is still struggling financially, he is constantly sending money to the applicant in Brazil, he recently refinanced his house to pay off his debts and he is unable to further his educational training. *Applicant's Spouse's Statement*, at 2. The record includes numerous money wire transfer receipts with the applicant's spouse as the sender and the applicant as the receiver. In addition, the president of a flight services company states that the applicant's spouse's training has been terminated due to financial hardship from sending funds to the applicant. *Letter from* [REDACTED] dated January 26, 2006. Considering the financial and medical issues, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States without the applicant.

The second part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Brazil. The applicant's spouse states that it would be difficult for him to move to Brazil because he would be leaving behind a lifetime of friends and family and this would add to his depression. *Applicant's Spouse's Statement*, at 2, undated. Other than his father, mother and brother, the record is not clear as to the applicant's spouse's lawful permanent resident or U.S. citizen family ties to the United States. The applicant's spouse states that he would be unable to seek therapy in Brazil as he does not speak, read or write Portuguese. *Id.* However, the record does not indicate that the applicant's spouse would need therapy in Brazil. The applicant's spouse states that he would not be able to utilize his G.I. bill in Brazil and combined with the high cost of flight training, his dream of an aviation career would become impossible. *Id.* at 2-3. There is no substantiating evidence that the applicant's spouse could not receive flight training in Brazil. In addition, there is no evidence of country conditions information in the record or evidence that the applicant's spouse would encounter financial hardship in Brazil. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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 applicant's spouse states that he is very close to his father, mother and brother, the immigration problems are causing serious problems to his mother's health, his residing in Brazil would worsen his mother's illness and separation from his family would cause extreme personal hardship. *Applicant's Spouse's Statement*, at 3. The applicant's mother-in-law states that she has undergone thyroid cancer surgery at the Mayo Clinic and that other diagnoses have been made that will require repeated returns. *Applicant's Mother-in-Law's Statement*, undated. The applicant's mother-in-law's physician states that the increased stress of this situation is compounding her health issues. *Letter from* [REDACTED] dated August 15, 2006. Another physician states that the applicant's mother-in-law has asthma and mastocytosis, these diseases are affected by stress and anxiety, her asthma has flared up, and her asthmatic reactions trigger the mastocytosis. *Letter from* [REDACTED], dated April 6, 2006. While the record documents the medical problems from

which the applicant's spouse's mother suffers, it does not address how her health concerns would affect the applicant's should he relocate to Brazil. Based on the totality of the record, the AAO does not find that the applicant has demonstrated that her spouse would face extreme hardship upon relocation to Brazil.

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.

As mentioned previously, extreme hardship to the applicant's spouse must be established in the event that he remains in the United States and in the event that he relocates to Brazil. A review of the documentation in the record fails to establish extreme hardship to the applicant's spouse in the event that he relocates to Brazil. 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(a)(9)(B) 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.

The AAO notes that, as part of the decision, the officer-in-charge also denied the applicant's Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal. The Form I-212 was properly denied as there would be no purpose in granting permission to reapply since the applicant is otherwise inadmissible.

ORDER: The appeal is dismissed.