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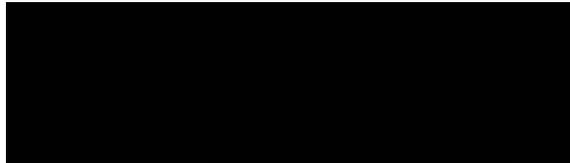
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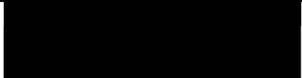
U.S. Citizenship
and Immigration
Services

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FILE:



Office: MIAMI, FLORIDA

Date: **MAR 20 2008**

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed April 4, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. Therefore, the record must be considered complete.

The record reflects that 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 last departure from the United States. The record indicates that the applicant is married to a United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen husband.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated March 6, 2006.

On appeal, the applicant states she did not understand United States immigration laws when she overstayed her visa and she apologizes for her unlawful presence. *Applicant's Letter attached to Form I-290B*, filed April 3, 2006.

The record includes, but is not limited to, statements from the applicant and her husband, a brief submitted with the Form I-601, and the applicant's marriage certificate. The entire record was reviewed and considered in arriving at 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.

In the present application, the record indicates that on April 17, 1998, the applicant initially entered the United States on a B1 nonimmigrant visa, with authorization to remain in the United States until July 16, 1998. On September 24, 2000, the applicant departed the United States. On November 3, 2000, the applicant reentered the United States on a B2 nonimmigrant visa, with authorization to remain in the United States until May 2, 2001. On August 26, 2002, the applicant married [REDACTED], a United States citizen, in Florida. On November 26, 2002, the applicant's husband filed a Form I-130 on behalf of the applicant. At the same time, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On November 24, 2003, the applicant filed a Form I-601. On December 4, 2003, the applicant's Form I-130 was approved. On March 6, 2006, the Acting District Director denied the Form I-601, finding the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from July 17, 1998, the date the applicant's authorization to remain in the United States expired, until September 24, 2000, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her September 24, 2000 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 one year. Regarding the applicant's unauthorized presence in the United States, the applicant states she "had a visa granting [her] entry for ten years at the time, and [she] truly did not know there was a limit of time for each visitation." *Applicant's Letter attached to Form I-290B, supra*. The AAO notes that when the applicant entered the United States on April 17, 1998, her passport was clearly stamped with the date she was admitted into the United States and the date she must depart the United States, which was July 16, 1998. Additionally, when the applicant reentered the United States on November 3, 2000, the Departure Record (Form I-94), which would have been stapled to her passport, was stamped with the date of admittance and the date she must depart the United States, which was May 2, 2001; and clearly she did not depart on that date.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant claims that her spouse would face extreme hardship if she were removed to Brazil. The applicant states she "believe[s] in, and [she is] deeply committed to, following the laws and regulations of the United States. [She] now live[s] happily in a loving relationship with [her] husband and [she has] come do [sic] love and admire the United States very much." *Applicant's Letter attached to Form I-290B, supra*. The applicant states her "husband is devastated at the problem that [she] caused." *Id.* The applicant's husband states that he cannot move to Brazil because he does not speak Portuguese and he does "not possess the knowledge or skills necessary to live and work in Brazil." *Letter from [REDACTED] dated March 24, 2006*. The AAO notes that it has not been established that the applicant's husband could not learn Portuguese, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Brazil. Additionally, the applicant has not established that she could not find gainful employment in Brazil. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Brazil.

In addition, the applicant does not establish extreme hardship to her husband if he remains in the United States, maintaining his employment. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states he has "suffered from clinical depression for most of [his] life, and [he] was going to therapy to help [him] through everything...Ever since [he] met [REDACTED], [he] no longer go[es] to therapy, and [he] do[es] not suffer anymore." *Letter from [REDACTED], dated November 14, 2003*. The applicant's husband now states that "[s]adly, once again [he] find[s] [him]self in need of medication for anxiety and depression as [he] deal[s] with this very stressful situation." *Letter from [REDACTED], supra*. The AAO notes that there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety, or whether any depression and anxiety is beyond that experienced by others in the same situation. Additionally, the applicant failed to submit any evidence of the medication that her husband is taking for his anxiety and depression. The AAO notes that there was no documentation submitted that the applicant provides any financial assistance to her husband and it has not been established the applicant's husband would suffer any financial hardship if the applicant is removed to Brazil. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The applicant's spouse faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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

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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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(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.

ORDER: The appeal is dismissed.