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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MD

Date: **SEP 03 2008**

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 PETITIONER:

[Redacted]

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 District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Brazil and citizen of Brazil and Italy. She was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a Lawful Permanent Resident and is the derivative beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140). The applicant initially entered the United States as a visitor for pleasure on August 2, 2000 and was authorized to remain in the United States until June 30, 2001. She remained in the United States until July 22, 2002, when she voluntarily returned to Brazil. She twice attempted to re-enter the United States, on September 23, 2002 at Atlanta, Georgia as a visitor for pleasure, and on August 15, 2005 at Niagara Falls, New York under the visa waiver program with her Italian passport. On both occasions she was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act and allowed to withdraw her application for admission. On or about October 7, 2005, she reentered the United States without inspection at or near Niagara Falls, New York and has remained in the United States since that date. 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 remain in the United States with her spouse.

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*, dated September 18, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (CIS) erred in failing to consider all of the evidence of hardship to the qualifying relative cumulatively, and states that the hardship “exceeds the normal hardship caused by separation, especially in view of the fact that the applicant is carrying her husband’s child.” Notice of Appeal (Form I-290B), dated October 17, 2007. Counsel further asserts that the level of poverty and crime in Brazil “is common knowledge and verified by the Country Reports of the U.S. Department of State.” *Id.* Counsel additionally asserts that CIS failed to give adequate weight to statements made by the applicant’s husband that his previous separation from the applicant was “almost unbearable.” *Id.* In support of the waiver application and appeal, the applicant submitted documentation including an affidavit from the applicant’s husband, letters from friends of the applicant and her husband, articles documenting conditions in Brazil, photographs of the applicant and her husband and daughter, and recent articles documenting an outbreak of dengue fever in Rio de Janeiro. 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:

- (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 Secretary, 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 AAO notes that the record contains several references to the hardship that the applicant’s daughter would suffer if she were to relocate to Brazil. Section 212(a)(9)(B)(v) of the Act provides that a waiver of section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative, and hardship to the applicant’s daughter will not be separately considered, except as it may affect the applicant’s spouse.

Section 212(a)(9)(B)(v) of the Act provides that a 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 on a qualifying family member. 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 (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. These factors included 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.

U.S. court decisions have additionally 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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 v. INS*, *supra*, the court further held 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. Moreover, the U.S. 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 record reflects that the applicant is a twenty-nine year-old native of Brazil and citizen of Brazil and Italy who entered the United States as a visitor for pleasure on August 2, 2000 and remained in the United States until July 22, 2002. She married her husband in Brazil on August 6, 2003 and re-entered the United States without inspection on October 7, 2005. The record further reflects that the applicant's husband is a twenty-eight year-old native and citizen of Brazil and Lawful Permanent Resident. The applicant currently resides in Germantown, Maryland with her husband and infant daughter.

The applicant accrued unlawful presence from June 30, 2001, when her period of authorized stay as a visitor for pleasure expired, until July 22, 2002, when she voluntarily returned to Brazil. The applicant is therefore 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 one year or more. Pursuant to section 212(a)(9)(B)(i)(II), the applicant is barred from again seeking admission within ten years of the date of her departure.

Counsel asserts that due to the high crime rate and widespread poverty in Brazil, the applicant's husband would suffer extreme hardship if the applicant is removed from the United States. The applicant's husband additionally states, "Rio de Janeiro where we come from is a very dangerous place where gangs, drug lords, and crime rate is very high, the security situation is peril (sic) and would pose an extreme hardship and safety concern for an American citizen." *Letter from* [REDACTED] dated April 28, 2008. He further states that his daughter deserves "a safe and promising future," and claims that she would not have such a future in Brazil due to the poor education system and lack of security. *Id.* In support of these assertions, the applicant submitted articles documenting crime in Rio de Janeiro, Sao Paulo, and other towns in Brazil as well as articles on an outbreak of dengue that sickened more than 75,000 people and killed at least 79 people in the state of Rio de Janeiro in the first half of 2008. Counsel also submitted with the appeal articles documenting crime and violence in Brazil and economic and social problems in Rio de Janeiro, the city where the applicant's husband states he comes from.

Conditions in the country or countries to which the qualifying relative would relocate are relevant in assessing extreme hardship, as are significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. Further, hardship to a child of a qualifying relative, if it would result in emotional or other hardship to the qualifying relative, is also a relevant factor. The applicant's husband states they are from Rio de Janeiro, and much of the evidence submitted relates to violent crime and other problems in that city, as well as other areas, including Sao Paulo. No evidence was submitted establishing that the applicant would reside in either of these areas if she returned to Brazil, and no evidence was submitted indicating where the applicant's family members reside or documenting their economic situation. Further, the AAO notes that the applicant did not reside in Rio de Janeiro when she returned to Brazil in 2002, and documentation on the record indicates that she resided in Itapema, Santa Catarina State from 2002 to 2005 and was employed for the municipality as an office clerk. *See Form G-325, Biographical Information, submitted with the applicant's application for adjustment of status and Sworn Statement in Proceedings under Section 235(b)(1) of the Act dated September 23, 2002.*

The AAO further notes that the applicant's Form G-325 lists her parents' place of residence as Itapema, Santa Catarina.

The evidence submitted indicates that the rate of poverty and violent crime in some areas of Brazil, in particular the slums of Rio de Janeiro, would possibly lead to extreme hardship for the applicant's husband if either he or the applicant and their daughter were forced to reside there. However, the record indicates that the applicant resided in another state and her family still resides there. No evidence was submitted to document conditions in the applicant's last place of residence in Brazil and no information was submitted concerning her family members in Brazil, including where they reside, their financial situation, or whether they have been affected by crime in Brazil. Further, although significant conditions of health affecting the qualifying relative's child and lack of access to medical care would be relevant in assessing extreme hardship, the evidence submitted concerning a recent outbreak of dengue in Rio de Janeiro does not establish that the applicant's daughter would likely be affected by such an outbreak or would not have access to medical care in Brazil. In the present case the evidence is insufficient to establish that conditions in Brazil would result in extreme hardship to the applicant's husband if he relocated to Brazil or to emotional hardship if the applicant and their infant daughter relocated there and he remained in the United States

Former counsel asserts that the applicant's husband would suffer extreme financial hardship if he relocated to Brazil with the applicant because he will not have the same opportunities he has in the United States due to the deteriorating economic situation in Brazil. *See Counsel's Letter in Support of the I-601 Application* dated August 25, 2006. Former counsel states, "[REDACTED] will not be able to work as a Driver or in any other profession and be able to earn what he earns now, an income that allows him to support himself and his wife." *Id.* The applicant's husband further states that if he relocates to Brazil with the applicant, he will suffer financial hardship and "finding a job that would allow us to live a (sic) honorable life is impossible." *Letter from [REDACTED]* dated July 5, 2006. Counsel submitted with the appeal articles documenting crime and poverty, particularly in the slums of Rio de Janeiro, as well as an article documenting the eventually successful efforts of one national of the United States to find a job in Brazil.

The AAO notes that although he has resided in the United States for several years, the applicant's husband is a native of Brazil who speaks Portuguese, and the evidence submitted is insufficient to support the assertion that he would be unable to find work in Brazil. The AAO further notes that the record indicates that the applicant was employed when she resided in Brazil from 2002 to 2005. *See Form G-325, Biographical Information, submitted with the applicant's application for adjustment of status.* The applicant's husband states in a letter submitted with the waiver application that their future would be uncertain and life would be difficult due to poor living conditions in Brazil in comparison to living in the United States, where they are "financially independent" and are able to support their household. There is no indication, however, that there are any unusual circumstances that would cause financial hardship for the applicant's husband beyond what would normally be expected as a result of the applicant's removal. The financial hardships described by the applicant's husband appear to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981), *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's husband claims that if the applicant returns to Brazil and he remains in the United States, he will suffer extreme hardship and states,

For a period, when I lived here without her, it was very hard and almost unbearable, knowing that there was the possibility that I would have to endure her absence for a long time. During that time I had difficulties in my work, because I could not fully concentrate on the tasks at hand, since my mind was always thinking about [REDACTED]. See letter from [REDACTED] dated July 5, 2006.

The applicant's husband states that being separated from the applicant would result in emotional hardship. There is no evidence on the record, however, to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with his spouse's deportation or exclusion. Although the depth of his distress over the prospect of being separated from his spouse is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists. The emotional hardship the applicant's husband claims he will suffer appears to be the type of hardship normally to be expected when a family member is excluded or deported. See *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996).

The emotional and financial difficulties that the applicant's husband would suffer appear to be the type of hardships that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch, supra* (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO also notes that the applicant is a citizen of Italy, and no claim was made that the applicant's husband would suffer extreme hardship if the applicant relocated to Italy rather than Brazil, or that the applicant would be unable to relocate to Italy. Therefore, the AAO cannot make a determination of whether the applicant's husband would suffer extreme hardship if the applicant relocated to Italy. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Further, the applicant entered the United States without inspection after being unlawfully present in the United States for more than one year and then departing the country. As a result of her illegal entry after this immigration violation, it appears that the applicant may also be inadmissible under section 212(a)(9)(C)(i) of the Act, and would need to request permission to re-enter the United States pursuant to section 212(a)(9)(C)(ii) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.