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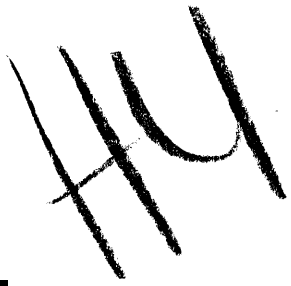
U.S. Citizenship and Immigration Services



[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: Applicant: [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 APPLICANT:

[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, Director
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Brazil. She 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 a period of one year or more. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her naturalized U.S. citizen spouse. She 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 and reside with her U.S. citizen spouse.

The Acting District Director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Acting District Director's Decision* dated August 5, 2003.

Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

> (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 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.

Section 212(a)(9)(B) of the Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). After reviewing the IIRIRA amendments to the Act regarding fraud, misrepresentation and unlawful presence in the United States and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground of inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

The record indicates that the applicant was admitted into the United States on May 15, 1994, on a nonimmigrant visa. She remained longer than authorized and on November 6, 1997, she married her now U.S. citizen spouse. On July 28, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on an approved Petition for Alien Resident. The record further reflects that an Authorization for Parole of an Alien into the United States (Form I-512) was issued to the applicant on January 11, 2001. The applicant departed the United States on an unknown date after the issuance of the Form I-512 and after a visit to Brazil she was paroled into the United States on May 27, 2001. It was this departure that triggered her unlawful presence.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security (Secretary)] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until July 28, 2000, the date of her proper filing of the Form I-485. 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.

As stated above, 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, U.S. citizen or lawfully resident spouse or parent.

In the present case, the applicant must demonstrate extreme hardship to her U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) of the Act. These 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.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) failed to correctly assess extreme hardship to the applicant's spouse (Mr. In support of this assertion, counsel submits a brief, an affidavit from the applicant's spouse and letters from friends and church members. Counsel further states that CIS did not balance the favorable factors in the applicant's case against the adverse factors required to decide whether a waiver is merited in the Secretary's discretion.

Before the AAO can look into the favorable and unfavorable factors in this case it must first determine if the qualifying family member would suffer extreme hardship if the applicant's waiver application were not approved.

Counsel states that Mr. has no family members in Brazil since he is a native of Portugal. Counsel also asserts that if the applicant's waiver application is denied Mr. might be forced to relocate to Brazil with the applicant. Furthermore, in the brief and in Mr. affidavit it is stated that Mr. would suffer emotionally and financially if his spouse's waiver application were not approved. Mr. states that if the applicant were forced to leave the United States he would suffer extreme hardship because he would lose the central person in his life. He further states that the applicant assists him in his financial matters including his bookkeeping. Furthermore he states that if he had to accompany the applicant to Brazil he would lose his business in the United States, it would be very difficult for him to adjust to life in Brazil, and he does not have any job prospects in Brazil and therefore would not be able to support his family. Counsel asserts that the economic conditions in Brazil are such that the applicant and Mr. will be unable to find comparably paid employment. The record does not establish that the applicant or Mr. would be unable to obtain employment in Brazil beyond generalizations regarding prevalent country conditions.

If Mr. were to relocate with the applicant to Brazil, it would be expected that some economic, linguistic and cultural difficulties would arise. No evidence exists that this will impact him at a level commensurate with extreme hardship.

There are no laws that require Mr. to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more that to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

The BIA noted in *Cervantes-Gonzalez,* that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from the husband or follow him to Mexico in the event he was ordered deported. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.*

In the present case, it appears that Mr. was aware of the applicant's immigration violation and the possibility of being removed at the time of their marriage on November 6, 1997.

In his brief counsel emphasizes the hardship to the applicant as set out in out in *Matter of L-O-G,* Interim Decision 3281 (BIA 1996) and in *Matter of Anderson,* Interim Decision 596, 597 (BIA 1978). Both *Matter of L-O-G* and *Matter of Anderson* dealt with suspension of deportation where hardship to the applicant is taken into consideration. "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(i) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). 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). *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. Moreover, the U.S. Supreme Court 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.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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.