U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: AUG 0 4 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting 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 record reflects that the applicant is a native and citizen of Brazil who was found to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), for having been unlawfully present in the United States. The applicant is engaged to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with her fiance in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to her U.S. citizen fiance and denied the application accordingly. *Decision of the Officer in Charge*, undated (mailed on March 22, 2007).

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 -
> >
> > > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.
> >
> > > (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 this case, the record indicates that the applicant entered the United States in November 1995 using a B2 visitor's visa. She overstayed her visa and remained in the United States until December 2002. The applicant returned to Brazil, then re-entered the United States using a visitor's visa two more times in 2003. The applicant entered the United States a fourth time in February 2004 using a visitor's visa. She overstayed her visa until she returned to Brazil in March 2005. Therefore, as the officer in charge found, and counsel does not contest, the applicant accrued unlawful presence from April 30, 1997 when the provisions of section 212(a)(9)(b) went into effect, until December 2002, and again from August 2004, when her last visitor's visa expired, until March 2005. *Record of Sworn Statement of* [redacted] dated July 1, 2005 (conceding she overstayed her visa twice). The applicant accrued unlawful presence for a period of more than 180 days but less than 1 year, as well as for over one year. She now seeks admission within ten years of her last departure in March 2005. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(I) and (II) of the Act.

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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under 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.

In this case, the applicant's fiance, [redacted], states that even though the couple was together during a relatively brief period of time from January 2005 until March 2005, he deeply cares for the applicant and wants her to marry her. [redacted] states that the applicant is the youngest of her mother's ten children and that the applicant's mother lives in Florida. According to [redacted] the applicant's mother has a heart condition and is "often times sick and in need of [the applicant's] support." [redacted] contends the applicant's siblings "work[] full time and live[] elsewhere." He states that the applicant "had no choice but to return to Brazil, even though she did not want to separate from her mother." [redacted] states he visits the applicant's mother on a regular basis and has gone to visit the applicant in Brazil three times. [redacted] a local law enforcement officer, SWAT team member, and detective, states he intends on continuing to live in the United States unless his job necessitates a stay overseas. He claims that "[his] education and work experience limits [him] to remaining in the United States." [redacted] states he "come[s] from a family steeped in [the] tradition of public service," and is "insulted that the USCIS would not respect this." He contends the

USCIS should consider his assessment that his fiance is not a threat to the United States and that denying her admission is "spiteful." *Affidavit of* [redacted] dated May 8, 2006; *Letters from* [redacted], both undated.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

As an initial matter, the AAO notes that the applicant and relationship began after the applicant had twice overstayed her visa. In addition, the couple got engaged in June 2005, after the applicant had already departed the United States and [redacted] "knew there was a strong possibility she would not be allowed to return to the U.S., as she had overstayed her visa by more than six months." *Affidavit of* [redacted] *supra.* Therefore, the equity of their relationship and future marriage, and the weight given to any hardship [redacted] may experience, is diminished as they began their relationship with the knowledge that the applicant might not be permitted to re-enter the United States. *See Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation.

The AAO recognizes that [redacted] has endured and will continue to endure hardship as a result of the denial of his fiance's waiver application and is sympathetic to the couple's circumstances. **However, their situation, if** [redacted] decides to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (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).

In addition, there is insufficient evidence to show that would experience extreme hardship if he moved to Brazil to avoid the hardship of separation. According to [redacted] Biographic Information form, he has been a law enforcement officer for the Broward Sheriff's Office in Fort Lauderdale, Florida, since January 2000. *Biographic Information (Form G-325A).* [redacted] does not elaborate or explain why he believes that his education and work experience limit him to remaining in the United States, particularly given he acknowledges that he would leave the United States if "any possible future job with a federal law enforcement agency necessitates [his] stay overseas." *Affidavit of* [redacted] *supra.* There is no record evidence addressing employment or country conditions in Brazil that suggest [redacted] would be unable to find employment or suffer extreme hardship if he moved there. In any event, even if [redacted] were

to experience some financial hardship by moving to Brazil, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

Moreover, while the AAO recognizes [redacted] public service and does not challenge his assessment of the applicant's character, the statute explicitly states that extreme hardship to the applicant's U.S. citizen or lawfully resident spouse or parent must be established. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). In this case, as explained above, the applicant has not met her burden of establishing extreme hardship to her fiance. To the extent the applicant's lawful permanent residence mother purportedly has health problems and relies on the applicant for assistance, *Affidavit of* [redacted], *supra,* significantly, even though the applicant submitted a letter for the record, her letter makes no mention of her mother. *Letter from* [redacted], undated. In addition, there is no letter from the applicant's mother in the record and no medical documentation to substantiate [redacted] claim.[1] Although counsel states in his brief that the applicant's mother "suffers from HTN and cardio megaly (large heart)[,] takes Coreg, Digoxin, Enalapril, Aldactone and Lasix," and needs continuous medical care," *Appellant's Brief* at 4, dated May 14, 2007, the unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

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, 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.

---

[1] The AAO notes that although counsel contends "affidavits of and [redacted] and a letter from physician" support the claim regarding the applicant's mother's health problems, *Appellant's Brief* at 7, a thorough review of the record indicates there is no such record evidence.