U.S. Department of Homeland Security
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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: LIMA, PERU Date: NOV 20 2006

IN RE: [redacted]

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:

[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 Acting 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 last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The acting officer-in-charge found that the applicant failed to establish that her qualifying family member would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. The application was denied accordingly. *Decision of the Acting Officer-in-Charge*, dated March 14, 2005.

On appeal, counsel asserts that refusing to grant the applicant admission to the United States would cause extreme hardship to her U.S. citizen spouse. *Counsel's Brief*, dated May 4, 2005.

In the present application, the record indicates that the applicant entered the United States using a valid visitor's visa on February 7, 2001. The applicant was granted a six-month stay in the United States, ending on August 6, 2001. The applicant departed the United States on August 9, 2004. Therefore, the applicant accrued unlawful presence from August 6, 2001, when her authorized stay under the visitor's visa expired until August 9, 2004, the date she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her August 9, 2004 departure from the United States. Therefore, the applicant is 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.

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. Hardship the alien herself experiences or her children experience due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless 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).

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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Brazil or in the event that he resides 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. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Brazil. The applicant's spouse makes no assertions regarding the possibility of relocating to Brazil. The record indicates that the applicant's spouse owns a business and a home in the United States. The applicant submitted his 2003 tax return establishing that he owns a business, A-1 Specialty Contractors, LLC, however he did not submit evidence to show that he would lose his business if he relocated to Brazil. Counsel submitted country reports for Brazil, but did not show how the information in the reports related to the specifics of the spouse's situation. The AAO finds that the current record does not reflect that the applicant's spouse would suffer extreme hardship as a result of relocating to Brazil.

The second 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 submitted various documents to show that he is suffering extreme emotional hardship as a result of being separated from the applicant. Counsel states in her brief that the applicant's spouse has been suffering from depression since he learned that the applicant's waiver application was denied on March 14, 2005. The applicant's spouse checked himself into the Nason Medical Center to deal with these problems on March 29, 2005. The record includes a note from the Nason Medical Center, which states that the applicant's spouse should not go to work for 2 days. Counsel states that the applicant's spouse continued to suffer from depression that was so severe he did not go to work at all. She states that he went to the St. Francis Emergency Room, where he was referred to a psychiatrist, [redacted]

The record includes a letter from [redacted] dated April 11, 2005. The letter states that she evaluated the applicant's spouse on April 11, 2005. [redacted] states that the applicant's spouse was referred to her by St. Francis Emergency Room, where he went because of extreme anxiety. [redacted] states that the recent separation from the applicant has caused the applicant's spouse extreme mental anguish and he carries a diagnosis of major depressive episode, severe. She asserts that the applicant's spouse's inability to sleep, his lack of motivation, and his poor energy levels have made working very difficult and he fears he will lose his business. [redacted] states that she prescribed a tranquilizer for the applicant's spouse. The applicant's spouse also submitted a letter from one of his clients that supports the statements made about his mental health problems. The letter, from [redacted] the Vice President of Rice Planter Carpets Inc. is dated April 26, 2005 and states that the applicant's spouse has done subcontractor work for his company for five years. He states that the applicant's spouse's attitude and work has been somewhat lacking for the past seven or eight months. He states that he personally feels this change in work ethic and dependability is a result of the separation from the applicant. The AAO finds that the applicant has established a history of mental health problems and treatments since the applicant's waiver application was denied. Therefore, the applicant has established that her U.S. citizen spouse would suffer extreme emotional hardship as a result of being separated from the applicant.

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 stated above, extreme hardship to the applicant's spouse must be established in the event that he resides in the United States or in the event that he resides in Brazil. Based on the current record, the applicant's spouse has not shown that he would suffer extreme hardship as a result of relocating to Brazil. Therefore, a finding of extreme hardship is not warranted in this case.

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.