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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

H3

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: JAN 26 2007

IN RE: [redacted]

APPLICATIONS: 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), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, American Embassy, 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 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, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting a material fact as to her intentions when entering the United States. The record indicates that the applicant is the fiancée of a United States citizen and she is the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129F). 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), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her fiancé.

The Officer-in-Charge found that the applicant failed to establish that extreme hardship would be imposed on the applicant's fiancé and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated June 8, 2005.

On appeal, the applicant, through counsel, asserts that the denial of the applicant's admission into the United States would result in extreme hardship to her United States citizen fiancé. *Brief attached to Form I-290B*, filed July 13, 2005.

The record includes, but is not limited to, counsel's brief and an affidavit from the applicant's fiancé. The entire record was reviewed and considered in arriving at a decision on the appeal.

If an alien seeking a K nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

> (a) *General.*-(1) *Filing procedure*-(i) *Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

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.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> ...
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present application, the record indicates that the applicant entered the United States on a B2 nonimmigrant visa in February 2001. She accepted gainful yet unauthorized employment within 30 days of her arrival into the United States. Additionally, she did not depart the United States until January 2003. On November 2, 2004, the applicant's Form I-129F was approved. On or about January 21, 2005, the applicant filed a Form I-601. On June 8, 2005, the Officer-in-Charge denied the applicant's Form I-601, finding that the applicant accrued more than 365 days of unlawful presence and that she accepted unauthorized employment within 30 days of her arrival to the United States. The applicant is attempting to seek admission into the United States within 10 years of her January 2003 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.

Additionally, the applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act. Waivers under sections 212(i) and 212(a)(9)(B)(v) of the Act are 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 alien herself experiences upon deportation is irrelevant to section 212(i) and section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's fiancé. 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.

Counsel asserts that the applicant's fiancé would face extreme hardship if he relocated to Brazil in order to remain with the applicant. Counsel claims that the applicant's fiancé would face emotional hardship if he relocates to Brazil, because he cannot be separated from his son, whom he has joint custody of with his ex-girlfriend. However, he is also facing emotional hardship because of his separation from his fiancée. Counsel contends that the applicant's fiancé has reached a "crisis point," in regards to his emotional and psychological wellbeing. *Brief attached to Form I-290B*, pages 1-2, filed July 13, 2005. As evidence of his emotional and psychological condition, in 2005, the applicant's fiancé resigned from his position with [redacted] Partners, stating his personal issues at home were a major distraction for him and "were causing excessive stress on his overall work capability." ***Letter from*** [redacted] ***Executive Vice President,*** [redacted] dated July 6, 2005. Genesis Technology Partners offered to assist the applicant's fiancé in helping him with his personal issues, but the applicant's fiancé chose to resign instead. *Id.* The AAO notes that the applicant's fiancé resigned from his position more than two years after the applicant departed the United States. Since the applicant's fiancé has not sought psychological help, but relies "on his religious groups for counseling," there are no professional evaluations for the AAO to review to determine what personal issues are affecting his emotional and psychological wellbeing. See *Brief attached to Form I-290B*, page 2, filed July 13, 2005.

Counsel does not establish extreme hardship to the applicant's fiancé if he remains in the United States, maintaining his part-time employment and close proximity to his son. As a United States citizen, the applicant's fiancé is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant and her fiancé have been living apart since January 2003. It does not appear that the applicant's fiancé has experienced financial hardship as a result of the separation from the applicant, except what has been self-imposed, and there is no evidence that the applicant has ever contributed financially to her fiancé. The applicant's fiancé 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).

Although the AAO is not insensitive to the applicant's situation, the financial strain of visiting the applicant in Brazil and the emotional hardship of separation, including the applicant's fiancé's psychological and emotional decline, are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's fiancé will endure, and has endured, hardship as a result of separation from the applicant. However, his situation if he remains 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.

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 fiancé 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 sections 212(a)(9)(B) and 212(a)(6)(C) 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.