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

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[redacted]

FILE: [redacted] Office: LIMA, PERU Date: MAR 06 2007

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 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's spouse is a U.S. citizen and the applicant is seeking a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that based on the evidence in the record, the applicant failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Officer-in-Charge*, dated July 5, 2005.

On appeal, counsel asserts that the denial contained errors in the application of law. *Form I-290B*, dated August 9, 2005.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, the applicant's statement, prescription records, evidence of counseling, letters of support and the applicant's spouse's business documents. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in 1999 and she returned to Brazil on December 24, 2004. The applicant accrued unlawful presence from the date she entered in 1999 until her departure on December 24, 2004. The 10 year bar was triggered by the applicant's departure from the United States. Therefore, the applicant is 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 more than one year.

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

> (B) Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.
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> . . . .

> (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. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he relocates to Brazil or in the event that he remains in the United States, as he is not required to reside outside of the United States based on denial of the applicant's waiver request. The record reflects that the applicant is currently residing in Brazil.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Brazil. The applicant's spouse states that he came to the United States at the age of twenty, he has six siblings in the Dallas/Forth Worth area, he has two other siblings in the United States, he has two sons and he is extremely close to his family. *Applicant's Spouse's Statement*, at 1, dated August 3, 2005. The record reflects that the applicant's spouse's sons are from a prior marriage. *Agreed Final Decree of Divorce*, at 2, June 21, 2001. The applicant's spouse states that he is very involved with his sons' lives and he is the source of support for his sister who is severely depressed as a result of her divorce. *Id.* at 4. One of the sons states that the applicant's spouse is currently remaining in the United States because he realizes how necessary he is in his sons' lives. *Applicant's Son's Statement*, undated. The record reflects that the applicant's spouse had joint custody with his ex-spouse of the children, currently 21 and 23 years old, while they were being raised. *Agreed Final Decree of Divorce*, at 2-13.

The applicant's spouse states that he has a janitorial business with sixty-five employees and seventy contract workers, he achieved a successful business after trying several different times, and starting over in Brazil would be next to impossible. *Applicant's Spouse's Statement*, at 1, 4. The record includes evidence of nonemployee compensation for many of his contract workers. The applicant's spouse states that he previously tried to establish a business in Brazil, but it was not financially sound. *Id.* at 2. The applicant's

spouse states that his church is in the United States. *Id.* at 5. The applicant's spouse's pastor states that the applicant's spouse grew up with the church and he is a long-standing member of the church. *Letter from* [redacted], dated August 2, 2005.

Based on the applicant's spouse's separation from his family (particularly his two sons), the abandonment of his business, the difficulty in starting a new business in Brazil based on a prior attempt, departure from the church he grew up in, and the other common results of departure from the United States, the AAO finds that the applicant's spouse would face extreme hardship upon relocation 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 details the importance of the applicant in helping him run his janitorial business which includes invoicing, check writing, paperwork and translating. *Applicant's Spouse's Statement*, at 3. The applicant's spouse states that hiring a manager is risky as his previous hirings have resulted in financial loss or the danger of contracts being stolen from him, and he has not found anyone he can trust in helping with his business as much as the applicant. *Id.* The record does not include substantiating evidence that the applicant's spouse has been unable to find a reliable and trustworthy person to assist with his business, and that he is encountering financial difficulty while running the business without the applicant.

The applicant details their high degree of affection for each other and their spiritual commonalities. *Applicant's Statement*, at 1-2, undated. An elder at their church details their spiritual growth together. *Letter from* [redacted], dated August 2, 2005. The applicant's spouse states that he is seeing a counselor to help him deal with his depression. *Applicant's Spouse's Statement*, at 4. The record includes a statement of services for several months of counseling and a list of prescriptions for the applicant, which have been prescribed for depression, insomnia and hyperlipidemia. However, the record does not include an analysis from a treating physician, psychologist or counselor regarding the source or severity of his medical problems, and how separation will affect his problems. Based on a review of the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States without 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.

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.