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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 29 2008

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. 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 ten years of her last departure from the United States. The applicant is married to a naturalized United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The Director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her naturalized U.S. citizen spouse. The application was denied accordingly. *Decision of the Director,* dated April 3, 2007.

On appeal, counsel asserts that the applicant has demonstrated that her spouse would suffer extreme hardship if the applicant were removed from the United States. *Form I-290B; Attorney's Brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; statements from various family members of the applicant's spouse; statements from the applicant's friends; housing loan statements for the applicant and her spouse; mortgage interest statements for the applicant and her spouse; bank statements for the applicant and her spouse; tax statements for the applicant and her spouse; earnings statements and W-2 forms for the applicant's spouse; a letter of employment for the applicant's spouse; a medical letter for the applicant; credit card statements; a car insurance statement; and a gym membership statement. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The record indicates that the applicant was admitted to the United States on March 21, 2000 with a B-2 visa valid until September 20, 2000. *Form I-94; Attorney's brief.* The applicant overstayed her visa. *See Form G-325A, Biographic Information sheet, for the applicant.* On March 30, 2002 the applicant married her naturalized U.S. citizen spouse. *See marriage certificate; spouse's naturalization certificate.* On May 4, 2002 the applicant's spouse filed a Form I-130, Petition for Alien Relative, on behalf of the applicant. *Form I-130.* The Service approved this petition on February 20, 2004. *Id.* On March 17, 2004 the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status. *Form I-485.* The applicant left the United States twice after filing to adjust her status, returning under an authorization of parole on September 20, 2004 and January 16, 2005. *See Form I-512L, Authorization for Parole of an Alien into the United States; Arrival information records; Attorney's brief.* Thus, the applicant accrued unlawful presence from September 20, 2000, the date in which her authorized period of admission expired, until March 17, 2004, the date the applicant filed the Form I-485.[1] In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of her 2004 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.

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 inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant herself or other family members would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's spouse if the applicant is removed. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States 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

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[1] The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [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.*

conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Brazil or 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.

If the applicant's spouse travels with the applicant to Brazil, the applicant needs to establish that her spouse will suffer extreme hardship. While the applicant's spouse is a naturalized citizen of the United States, he is a native of Portugal and lived there until he was 18 years old. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. While the record does not address the language abilities of the applicant's spouse, the AAO notes that Portuguese is the primary language spoken in both Brazil and Portugal. While the record fails to mention whether the applicant's spouse has any family members who reside in Brazil, the AAO observes that the parents and sisters of the applicant's spouse live in the United States. *Id.; Attorney's brief.*

The record does not address how the applicant's spouse would be affected if he resided in Brazil. In his own affidavit, the applicant's spouse focuses on the depression his mother and the applicant are experiencing, but fails to indicate how he would be affected if he resided in Brazil. *Statement from the applicant's spouse*, dated May 3, 2007. The applicant's spouse states that his entire family has a history of depression and that his mother is currently taking the medication Xanax. *Statement from the applicant's spouse*, dated May 3, 2007. The AAO notes that the record fails to include documentation from a licensed health practitioner supporting such assertions. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The mother of the applicant's spouse states that if her son and daughter-in-law were to go away and leave her, her heart would be broken. *Statement from the mother of the applicant's spouse*, dated May 3, 2007. While the AAO acknowledges these statements, it notes that the mother of the applicant's spouse is not a qualifying relative for purposes of this case. Counsel for the applicant states that due to the closeness of their family, the family of the applicant's spouse could easily be considered an extension of himself. *Attorney's brief.* Counsel also states that the applicant's spouse has a genuine and overwhelming fear that his mother will suffer extreme and even fatal consequences if the applicant is removed from the United States and that, as a result, he is emotionally distressed. *Id.* Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *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). The AAO recognizes that the hardship suffered by one's family members may have an effect upon the qualifying relative; however, in this particular case, the record places the focus upon the suffering of these family members, rather than the applicant's spouse. The record fails to establish how the applicant's spouse, the only qualifying family member of this case, would be affected if he resided in Brazil and his family were to suffer. The record does not address whether the applicant's spouse cares for his family in the United States on emotional as well as financial levels, and how he would be affected were he no longer able to provide such care. Furthermore, the record does not address what additional support the family of the applicant's spouse may have in the United States. When looking at

the aforementioned factors, the AAO finds that the applicant has not demonstrated that her spouse will suffer extreme hardship if he resides in Brazil.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse asserts that he would suffer extreme hardship if the applicant were required to leave the United States, as they have a joint home, a joint financial structure, and a joint life. *Statement from the applicant's spouse*, undated. Included in the record are bank statements showing a joint checking account for the applicant and her spouse, tax statements filed jointly for the applicant and her spouse, and housing loan statements in the name of the applicant and her spouse. *See bank statements; tax statements; and mortgage statements.* While the AAO acknowledges that the applicant and her spouse share a life together, there is nothing in the record to establish the nature extent of the economic hardship the applicant's spouse would experience if the applicant were removed from the United States. Further, the applicant has submitted no proof that the applicant's spouse would be unable to obtain employment in Brazil and contribute to her family's financial well-being from a place other than the United States.

As previously noted, the parents and sisters of the applicant's spouse live in the United States. *Form G-325A, Biographic Information sheets, for the applicant's spouse; Attorney's brief.* The record includes a medical letter stating that the applicant was under medical care for major depression and was hospitalized. *Letter from* [redacted] *M.D.*, dated March 2, 2004. The AAO notes that the applicant herself is not a qualifying relative for purposes of this case, and while the applicant's spouse states that it has been extremely difficult to see his spouse and mother depressed (*See statement from the applicant's spouse*, dated May 3, 2007), the record fails to document the emotional distress claimed by the applicant's spouse and he has sought any type of treatment from a licensed health practitioner to cope with his feelings. Furthermore, the record fails to specify how the applicant's spouse would be directly affected if he remained in the United States while the applicant resides in Brazil.

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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Therefore, the applicant has failed to establish that her spouse would suffer extreme hardship if he remained in the United States following the denial of her waiver request.

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.