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MAIL STOP 2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: MIAMI, FL Date: OCT 30 2008

IN RE: Applicant: [redacted]

APPLICATION: 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)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 District Director, Miami, Florida and appealed to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant, a native and citizen of Brazil, entered the United States in November 1987 as a nonimmigrant visitor for pleasure, with permission to remain for six months, yet remained in the United States beyond the period of authorized stay. The proper filing of an affirmative application for adjustment of status (Form I-485) 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.* As such, the applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions through May 28, 2002, the day the applicant filed the Form I-485. The applicant was thus 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the District Director,* dated August 1, 2006.

In support of the appeal, the applicant submitted the following: a completed Form I-290B, Notice of Appeal (Form I-290B), dated August 25, 2006; financial documentation pertaining to the applicant and her spouse; evidence of the applicant's spouse's lawful permanent resident status in the United States; a letter confirming self-employment from the applicant's spouse, dated August 25 2006; documentation relating to the applicant's spouse's business; and medical documentation pertaining to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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

> 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…

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. 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.

The applicant asserts that her lawful permanent resident spouse will suffer extreme hardship if her waiver application is denied. As the applicant states,

> Over the years, my husband has become a diabetic. His medical condition has become more and more critical resulting in the necessity of special care. I am my husband's sole caretaker and prepare all of his special meals, adhering to the doctor's strict orders, do the grocery shopping manage our home. I accompany my husband to his doctor's visits and schedule his appointments and help my husband with his medication. My husband has periods when he becomes weak due to his medical condition and needs me at his side. He would suffer extreme hardship if I were to leave him and return to Brazil….

See Form I-290B, dated August 25, 2006.

To substantiate the applicant's statements, a letter is provided by [redacted]. As Dr. [redacted] states,

> **This patient [the applicant's spouse] suffers from diabetes….** Patient has multiple symptoms of diabetes. Dizziness, fatigue, sometimes almost passes out. Patient alone cannot control his disease due to diet restrictions and different medications that he takes. His wife [the applicant] helps him with his diabetic needs, diet and other medical care.
>
> It is very important that his wife stays in America to help him with his disease….

Letter from [redacted] *M.D., Family Medicine,* dated August 25, 2006.

To begin, it has not been established that were the applicant removed from the United States, that any alternate arrangements for the applicant's spouse's daily care would cause extreme hardship to the applicant's spouse. In addition, it has not been established that the applicant's spouse would be unable to travel to Brazil, his home country, on a regular basis to visit the applicant. Furthermore, no evidence has been provided to establish that the applicant would be unable to obtain gainful employment in Brazil, thereby providing her with the ability to assist her spouse financially with respect to his daily care while he remains in the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Finally, the applicant's spouse's medical condition does not appear to be extreme in nature, as evidenced by the fact that he has been able to support himself and the applicant, as the proprietor of his own financially viable company, Januzzi Services, Inc., as a painting contractor, since 2003. *See Letter from* [redacted] *Proprietor, Januzzi Services, Inc.*, dated August 25, 2006.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship and familial and emotional bonds exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The AAO recognizes that the applicant's spouse will endure 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 removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not established that the applicant's spouse will suffer extreme hardship were the applicant's waiver request denied. The record fails to establish that the applicant's spouse's continued medical care and survival directly correlate to the applicant's physical presence in the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why her spouse is unable to relocate to Brazil, his home country.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her lawful permanent resident spouse would suffer extreme hardship if she were not permitted to remain to the United States, and moreover, the applicant has failed to show that her lawful permanent resident spouse would suffer extreme hardship were he to relocate to Brazil to reside with the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.