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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LIMA, PERU Date: MAY 27 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 ten years of her last departure from the United States.[1] The applicant is married to a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge,* dated November 21, 2006.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant failed to meet her burden of establishing extreme hardship to her qualifying relative as necessary for a waiver. *Form I-290B; Attorney's brief.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a psychological evaluation for the applicant's spouse; a statement from the applicant's spouse; a statement from [redacted], Commercial Consul, Consulate General of the United States of America, Rio de Janiero; academic degrees and grade transcripts for the applicant and her spouse; a Brazilian police clearance letter for the applicant; a statement from the applicant; published country conditions reports; medical statements, records, and prescriptions for the applicant's spouse; statements from the applicant's mother-in-law, father-in-law and brother; an employment letter for the applicant's spouse; tax statements and W-2 Forms for the applicant's spouse; a statement from [redacted] Management Executive; a statement from [redacted]; a property title; bank statements; telephone bills; and a statement from a friend. 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-

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[1] The AAO also notes that the Officer in Charge found the applicant to be inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The AAO will not analyze whether the applicant's is inadmissible under section 212(a)(6)(C) of the Act as the extreme hardship analysis required for a waiver under section 212(i) of the Act is the same as that required under section 212(a)(9)(B)(v).

> (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.

In the present application, the record indicates that the applicant was admitted to the United States on February 10, 2001 on a B-2 visa. *Consular Memorandum Report, US Consulate Rio de Janeiro, Brazil*, dated June 7, 2006. The applicant remained in the United States until her departure in January 2005. Id. The applicant, therefore, accrued unlawful presence from August 2001 until she departed the United States in January 2005. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 2005 departure from the United States. The applicant is, therefore, 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant experiences upon removal is not directly relevant to the determination as to whether she is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. 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 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 whether he resides in Brazil or the United States, as he is not required to reside outside 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. The applicant's spouse was born in the United States. *Birth certificate.* The applicant's spouse does not speak Portuguese. *Statement from the applicant's spouse*, dated May 23, 2006. His parents are elderly and have medical issues. *Id.* His father has undergone surgery on his prostate to allow continued normal urinary functions. *Statement from* [redacted] *F.A.C.S.*, dated May 9, 2006. He will require continual monitoring to assure normalcy and as an alert for possible cancer. *Id.* The mother of the applicant's spouse is a cancer survivor. *Statement from the mother of the applicant's spouse*, dated May 11, 2006. The applicant's spouse is very close to his parents and brother, and has almost always lived in close proximity to them. *Statement from the applicant's spouse*, dated May 23, 2006. Not being able to do so would have a tremendous emotional impact on all of them. *Id.* The applicant's spouse notes that Brazil has a very high unemployment rate and his job prospects will already be slim as he does not speak Portuguese. *Id.* Published country conditions reports notes that unemployment in Brazil's six largest metropolitan areas was 10.4 percent, the same as the previous month and the highest since April 2005. *"Brazil April Unemployment Rate Holds at 12-Month High (Update3),"* *Bloomberg.com*, dated May 25, 2006. In 1995, the applicant's spouse was involved in a ski accident where he suffered internal bleeding, contusions to his liver and kidneys, and a dislocated hip. ***Statement from*** [redacted] *MA, MSW, LCSW, CPFT, PsyD, JD*, dated May 22, 2006. The applicant's spouse continues to exhibit signs and symptoms consistent with chronic hip pain and lower back pain. *Statement from* [redacted] dated May 18, 2006. While the AAO acknowledges the documented physical condition of the applicant's spouse, it notes that country conditions reports in the record indicate that medical care is good in Brazil's main cities. *Brazil, Consular Information Sheet, U.S. Department of State*, dated May 24, 2006. When looking at the aforementioned factors, particularly the applicant's spouse's lack of familial and cultural ties to Brazil, his inability to speak Portuguese and the effect this may have upon his employment opportunities, and his close relationship to his aging parents who have health issues, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Brazil.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. To demonstrate that her spouse would suffer extreme emotional hardship if he remains in the United States without her, the applicant has submitted a psychosocial evaluation prepared by a licensed clinical social worker. The report indicates that the applicant's spouse believes that the loss of his attachment to the applicant would be nothing less than overwhelming and devastating, and that he becomes hopeless and feels terrible despair when he begins to consider the dire consequences if he is not permitted to remain with the applicant in his

home in the United States. *Statement from* [redacted] *MA, MSW, LCSW, CPFT, PsyD, JD*, dated May 22, 2006. The applicant's spouse admits to feeling uncomfortable and hopeless when he is alone and has exaggerated fears of isolation. *Id.* The applicant's spouse reports that his persistent and excessive worry about separation from the applicant as a result of the immigration case has caused him constant anxiety and sadness, and reflects his inability to function in a healthy manner in her absence. *Id.* The applicant's spouse survived a horrific accident several years ago that left him traumatized and experiencing undiagnosed depression and anxiety, which resulted in engaging in self-destructive activities. *Id.* The clinical social worker states the applicant's spouse suffers from Posttraumatic Stress Disorder (PTSD) due to his near-death ski accident. *Id.* As a result, he has become anxious, phobic, and paranoid about everyday events. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview with the applicant's spouse. Accordingly, the AAO finds that the conclusions reached in the report do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering them speculative and diminishing the evaluation's value to a determination of extreme hardship. The record does not appear to address any other hardship issues if the applicant's spouse remains in the United States.

The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his 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 removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if he resides in the United States, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. 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.