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U.S. Citizenship and Immigration Services

H4

[redacted]

FILE: [redacted] Office: LIMA, PERU Date: MAR 1 2 2007

IN RE: [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:

[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 Officer in Charge, Lima, Peru, denied the waiver application, and it 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 is the spouse of a U.S. citizen. She 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), in order to reside in the United States with her spouse.

The officer in charge 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 Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated April 19, 2005.

The record reflects that, on July 25, 1991, the applicant was admitted to the United States as a visitor for pleasure. The applicant remained in the United States past the date on which her nonimmigrant status expired, six months after her admission. On January 18, 1995, the applicant was placed into proceedings. On January 19, 1996, the immigration judge granted the applicant voluntary departure until July 19, 1996. On July 19, 1996, the applicant's request for extension of voluntary departure was granted until July 20, 1996. The applicant failed to surrender for removal or depart from the United States, thereby changing the voluntary departure to a final order of removal. On December 5, 1996, a warrant of removal was issued informing the applicant that she should present herself for removal from the United States. The applicant failed to present herself for removal or to depart the United States. On March 29, 2003, the applicant married a U.S. citizen, [redacted]. On August 26, 2003, immigration officers apprehended the applicant and reinstated the removal order. On October 28, 2003, the applicant was removed from the United States and was returned to Brazil where she has since resided. On November 28, 2003, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on April 1, 2004. On July 12, 2004, the applicant filed an Application for Immigrant Visa (Form DS-230) based on the approved Form I-130. On November 10, 2004, the applicant appeared at the U.S. Embassy in Rio de Janeiro, Brazil. The applicant testified that she had accrued unlawful presence of greater than one year before returning to Brazil in October 2003. On November 12, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that, since the removal of his wife, [redacted] has become depressed and is undergoing therapy for major depression. She asserts that the physical and emotional distress being experienced by [redacted] constitutes extreme hardship and that the waiver should be granted. *See Applicant's Brief,* dated May 17, 2005. In support of her contentions, counsel submits the referenced brief, a psychological report, and updated letters from friends and family. The entire record was reviewed in rendering a decision in this case.

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 officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to being unlawfully present in the United States from April 1, 1997, the date of enactment of the unlawful presence provisions of section 212(a)(9)(B)(i) of the Act, until October 28, 2005, the date on which she was removed from the United States. Counsel does not contest the officer in charge's determination of inadmissibility.

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 on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is not considered in section 212(a)(9)(B)(v) waiver proceedings.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record reflects that [redacted] is a U.S. citizen by birth. The applicant and [redacted] have no children together. The record reflects further that the applicant is in her 50's, [redacted] is in his 40's, and [redacted] may have some health concerns.

Counsel asserts that [redacted] is suffering extreme hardship because he remains in the United States without the applicant. Counsel asserts that [redacted] has become depressed to the point of withdrawing from the outside world, becoming a hermit, slowly starving himself and that his friends and family fear he will eventually contemplate suicide. Counsel asserts that [redacted] is undergoing therapy and has been diagnosed with major depression. [redacted], in his affidavit, states that the emptiness and hardship he feels without the applicant by his side is hard to explain. He states that he loves and misses her and it has been very hard for the two of them to not be able to share holidays and anniversaries with family and friends. [redacted] parents, in their affidavits, state that the separation has decimated [redacted] and the applicant's savings and forced them to re-mortgage their house in order to meet the expenses associated with traveling to see each other and legal representation in this matter. They state that, although [redacted] has endured the most suffering from the applicant's removal, he has continued to keep their and the applicant's spirits high and at an optimistic level.

A psychological report diagnoses [redacted] with moderate symptoms of major depression, recurrent. The psychological report states that, prior to the applicant's arrest [redacted] reported that his occupational and social functioning was within normal limits but that, after her detention, he began to experience feelings of confusion and powerlessness. The psychological report states that [redacted] initially experienced acute depressive symptoms immediately following the applicant's removal which have become chronic over time, including loss of appetite, weight loss, sleep disturbance, social isolation, loss of interest in activities he used to find pleasurable, decreased energy levels, difficulty sustaining concentration and feelings of hopelessness. The psychological report concludes that it is the interviewer's clinical impression that [redacted] has experienced significant hardship as a result of the applicant's removal. Letters from [redacted] friends indicate that [redacted] has become withdrawn, lost weight and shows signs of depression since the applicant's removal.

The record does not contain evidence that [redacted] has received psychological treatment or evaluation other than during the appointment used to write the psychological report. Therefore, the psychological report may be given little weight. Additionally, the AAO notes that the psychological report was conducted after the Form I-601 was denied and that there was no mention of any psychological problems in the affidavit, which the applicant submitted with the Form I-601. While the psychological report diagnoses [redacted] with major depression, recurrent, there is no evidence in the record to indicate that [redacted] continues to require or receive treatment for this diagnosis. The psychological report indicates that [redacted] has become withdrawn and has feelings of hopelessness. However, [redacted] parents, in their affidavit, state that [redacted] has been the person who keeps up the family's and the applicant's spirits and optimism. There is no evidence in the record, besides the psychological report and letters from family friends, that [redacted] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the AAO acknowledges that [redacted] has experienced distress and depression as a result of his separation from his wife, this is not a hardship that is beyond those commonly

suffered by aliens and families upon removal. Additionally, the record reflects that [redacted] has family members, such as his parents, in the United States who may be able to assist him physically and emotionally in the absence of the applicant.

The AAO notes that [redacted]s parents indicate that the applicant's removal from the United States has decimated their son's and the applicant's savings, forced them to re-mortgage their home and to borrow money in order to meet their legal expenses and the travel costs of meeting in Brazil. They assert that the financial impacts of separation will eventually ruin their son financially. However, there is no evidence in the record to support their claims or a finding that the applicant's inadmissibility has resulted in a financial loss to [redacted]r that would constitute extreme hardship. There is no evidence in the record that demonstrates Mr. [redacted] is unable to perform his work duties or daily activities due to a physical or mental illness. Moreover, the AAO notes that [redacted] has family members in the United States, including his parents, who may be able to assist him financially in the absence of the applicant.

Counsel, [redacted] and [redacted]s parents do not assert that [redacted] would suffer extreme hardship if he accompanied the applicant to Brazil. The AAO is, therefore, unable to find that [redacted] would suffer extreme hardship should he choose to accompany the applicant to Brazil. Additionally, the AAO notes that, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [redacted] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [redacted] will face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. 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 thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1186(a)(9)(B)(v). 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.