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U.S. Citizenship and Immigration Services

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PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TAMPA, FLORIDA Date: MAR 03 2009

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 PETITIONER:

[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, 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 District Director, Tampa, Florida, and 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 has resided in the United States since November 6, 1997, when he was admitted as a B2 visitor for pleasure with permission to remain until May 5, 1998. The applicant remained in the United States until November 2004, when he returned to Brazil. He was again admitted as a visitor for pleasure on January 18, 2005 after presenting the same visitor's visa. He was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for a period of one year or more. The applicant is the spouse of a U.S. Citizen and the beneficiary of an approved Petition for Alien Relative. He 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 remain in the United States with his wife and children.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated October 22, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in failing to consider all of the evidence of extreme hardship to the applicant's wife in the aggregate. *See Counsel's Brief in Support of the Appeal at 2-3.* Counsel claims that the applicant's wife would suffer emotional distress if the applicant were removed to Brazil because she is pregnant and her pregnancy has to be closely monitored due to a condition that required her to terminate a previous pregnancy. *Brief at 4.* Counsel further states that the applicant's wife would suffer extreme hardship in Brazil because she does not speak Portuguese, would not be able to find employment there, would be a target for violent crime, and would not have access to medical care comparable to the care she receives in the United States. *Brief at 4-5.* Counsel additionally asserts that the applicant's wife would suffer extreme emotional and financial hardship if she remained in the United States without the applicant. *Brief at 4-5.* In support of the waiver application and appeal counsel for the applicant submitted letters from the applicant's wife, information on Cystic Hygroma and Fetal Hydrops, medical records for the applicant's wife, information on the role of a father in a child's development, information on unemployment and crime in Brazil, tax returns for the business owned by the applicant, birth certificates for the applicant's children, and an affidavit from the applicant's ex-wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (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.

> (v) Waiver. – The Attorney General [now Secretary, 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 contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere

showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-nine year-old native and citizen of Brazil who has resided in the United States since November 1997, when he entered as a visitor for pleasure with permission to remain until May 5, 1998. The applicant remained in the United States after that date and traveled to Brazil in November 2004. The applicant later married his current wife and filed an Application for Adjustment of Status (Form I-485) on November 21, 2006. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from May 5, 1998 until November 2004, when he departed the United States. The applicant's wife is a twenty-three year-old native of Japan and citizen of the United States. The applicant and his wife reside in St. Petersburg, Florida with their children, including the applicant's two children from his previous marriage.

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Brazil with the applicant because she is pregnant and her pregnancy must be closely monitored due to a condition that required her to terminate a previous pregnancy. *Brief at 4.* Counsel submitted medical records related to the applicant's wife's pregnancy, including laboratory reports and a summary of a genetic consultation and states: "Although this pregnancy does not present any evidence of Cystic Hygroma, it will remain a threat for future pregnancies." *Brief at 4.* Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's wife or child suffers from a serious medial condition. Counsel submitted laboratory reports and other information related to the pregnancy, none of which indicates that there is any risk to the applicant's wife or the child they were expecting in December 2007. The record does not contain any statement, such as a detailed letter in plain language from the applicant's wife's physician, indicating that any serious medical condition exists. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *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). Further, counsel did not submit any information on the availability of medical care in Brazil to support a claim that the applicant's wife would not have access to adequate care there.

Counsel additionally asserts that the applicant's wife would experience hardship in Brazil because she does not speak Portuguese, would not be able to find employment in Brazil, and would possibly be targeted for violent crime. *Brief at 5.* The applicant's wife further states in her affidavit,

> I don't speak Portuguese. It is very difficult for me to learn a different language. . . . Also I would never make any friends and it would make everyday tasks like shopping for dinner or even working nearly impossible. I have lived in the same area for twenty-one years. This place is my home and even though I do not have any family most of my friends are like a second family and care for me as such. *Undated letter from* [redacted]

Counsel submitted information on Brazil including an article entitled "Unemployment Rates in Brazil" and a Consular Information Sheet dated October 31, 2007. The AAO notes that the article, which was downloaded from the website www.zonalatina.com, contains a disclaimer that it is not an analysis of the causes and effects of employment but rather uses Brazil to illustrate "certain aspects of the definition of employment and unemployment." *Unemployment rates in Brazil.* No further information was submitted on economic conditions in Brazil, and no assertion was made concerning the applicant's ability to obtain employment in Brazil, even if his wife cannot find work due to her inability to speak Portuguese. The Consular Information Sheet reports that crime rates throughout Brazil are at a very high level, and describes crime in major urban centers, particularly crimes against tourists as well as crime in urban slums. The AAO notes however, that no information was submitted indicating where the applicant and his wife would reside if they were to relocate to Brazil and the crime rate in that area. It appears that the applicant's wife would have some difficulty adapting to life in Brazil due to her inability to speak Portuguese and because she has spent her entire life in the United States. The evidence on the record is insufficient, however, to support a finding that this hardship would rise to the level of extreme hardship.

Counsel additionally asserts that the applicant's wife would suffer extreme hardship if she remained in the United States without the applicant because of the emotional effects of separation from the applicant and financial hardship due to loss of the income generated from the business he owns. *Brief at 4-6.* The AAO notes that no documentation was submitted concerning the applicant's wife's mental health and the potential effects of separation from the applicant. 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)). The evidence does not establish that any emotional difficulties the applicant's wife would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress caused by the prospect of being separated from her husband is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

The applicant's wife states that the applicant provides most of the financial support for their family and further states that she planned to take time off from work after the birth of their baby in December 2007. *Undated letter from* [redacted] She further states that she was laid off from her job as of December 13, 2007 and that she would be unable to operate the Brazilian store the applicant owns because she does not speak Portuguese. *Undated letter from* [redacted] *Affidavit of* [redacted] dated May 7, 2005. No evidence was submitted to support the assertion that the applicant's wife was laid off from her job in December 2007, and the AAO further notes that more than a year has passed since the expected birth of their child in December 2007. Further, the applicant's wife has supported herself financially in the past, and the evidence on the record is insufficient to support a claim that she would be unable to support herself and her child if

the applicant were removed from the United States. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

The emotional and financial hardship the applicant's wife would experience if he is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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.