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**U.S. Department of Homeland Security**
Citizenship and Immigration Services
*Administrative Appeals Office* MS 2090
Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**

[redacted]

H2 H6

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 28 2010

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:

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.

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).

Perry Rhew
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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident husband and children.

The director found that the applicant failed to establish extreme hardship to her lawful permanent resident husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Director,* dated May 4, 2007.

On appeal, the applicant asserts that her mother will experience hardship if the present waiver application is denied. *Statement from the Applicant*, dated May 25, 2007.

The record contains statements from the applicant, the applicant's stepson, and the applicant's husband; a copy of the applicant's marriage certificate; a copy of a birth record for the applicant; a copy of the applicant's passport; tax and employment records for the applicant's stepson, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 reflects that the applicant entered the United States as a B-2 visitor for pleasure on March 8, 2001, with authorization to remain until September 7, 2001. She did not change or extended her status, thus she began accruing unlawful presence as of the date her B-2 nonimmigrant status expired. The applicant departed the United States in or about December 2003. Accordingly, she accrued over two years of unlawful presence in the United States. She now seeks admission pursuant to her application to adjust her status to permanent resident. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility on appeal.

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 to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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).

*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 to a qualifying relative. 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.

On appeal, the applicant asserts that her mother will experience hardship if the present waiver application is denied. *Statement from the Applicant* at 1. She explains that she did not have job prospects in Brazil, so she relocated to the United States. *Id.* She states that she attempted to obtain lawful permanent resident status through an employer, yet the application was undermined by the employer's tax violations. *Id.* She provides that her mother had a cerebral aneurysm and needed medical treatment and rest. *Id.* She states that she went with her young son to join her mother abroad, and that her mother had surgery which left her in a wheel chair, blind in one eye, and with no voice. *Id.* The applicant indicates that her father was unable to pay for her mother's medical needs, thus the applicant returned to the United States to work. *Id.* She states that she and her husband bought a house. *Id.* She notes that her husband is self-employed and she works as a nanny. *Id.* She explains that her mother suffered emotionally when she learned that the present waiver application was denied, as she misses the applicant. *Id.*

The applicant further notes that her husband is now a lawful permanent resident of the United States. *Id.*

The applicant's stepson stated that the applicant and her husband are close and that they have another son who was born in 2003. *Statement from the Applicant's Stepson*, dated December 15, 2006. He explained that the applicant arranges her work schedule in order to care for her young son, and that the applicant and her husband do not wish for their son to be watched by a babysitter. *Id.* at 1. He stated that life in Brazil would be hard for the applicant, the applicant's husband, and their son. *Id.* He noted that the applicant's husband could work to support their family in Brazil, but everyone would suffer emotionally. *Id.*

The applicant's husband stated that he is a native and citizen of Brazil. *Statement from the Applicant's Husband*, dated December 20, 2006. He noted that he resides in Danbury, Connecticut with the applicant and their three-year-old son. *Id.* at 1. He provided that he had a good job in Brazil as a commercial manager of a soft drinks company. *Id.* He explained that he and the applicant married, visited the United States, and decided to stay. *Id.* He provided that he and the applicant had their son, and that their son is the focus of the applicant's life. *Id.* at 2. He explained that the applicant traveled to Brazil in 2003 due to her mother's health crisis. *Id.* The applicant's husband expressed concern for the impact on his and the applicant's young son should he relocate to Brazil or remain in the United States without the applicant. *Id.* He asserted that he would have economic hardship if he must support himself and his son in the United States while supporting the applicant in Brazil. *Id.* He stated that he would have difficulty finding suitable work in Brazil due to age discrimination and lower wages for his painting trade. *Id.*

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is compelled to depart the United States. The applicant asserts that her mother will suffer extreme hardship if the waiver application is denied. However, the applicant has not shown that her mother is a citizen or permanent resident of the United States. Thus, hardship to the applicant's mother may not serve as a basis for a waiver under section 212(a)(9)(B)(v) of the Act.

The applicant has not established that her husband will experience extreme hardship should she depart the United States. The applicant's husband expressed that he will suffer economic hardship should the applicant reside in Brazil. However, the applicant has not submitted any evidence of her husband's income or expenses, or an account of their likely expenses in Brazil. It is noted that the applicant's husband reported that he previously held favorable employment in Brazil. While he claims that age discrimination may impact his ability to find a position there, the applicant has not provided any reports or evidence to support that a 48-year-old male with significant work experience in the country is unable to find employment that is sufficient to meet his and his family's needs. The applicant noted that she and her husband purchased a home, yet she has not submitted any documentation to support this fact. Based on the foregoing, the applicant has not provided adequate evidence to show that her husband would endure significant financial hardship should the present waiver application be denied, whether he remains in the United States or relocates to Brazil.

It is noted that the applicant's husband is a native and citizen of Brazil, thus he would not be faced with the challenge of adapting to an unfamiliar language or culture should he return there.

The applicant's husband expressed that he is close with the applicant and that he will endure emotional hardship should they be separated. He indicated that this hardship would be compounded should he attempt to care for his son alone, or should he be separated from his son. The AAO acknowledges that these emotional consequences are significant. However, the applicant has not submitted sufficient evidence or explanation to distinguish her husband's psychological challenges from those commonly experienced when family members are separated due to inadmissibility.

Federal court and administrative decisions have 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 record contains references to hardships that may be experienced by the applicant's son. Yet, the applicant has not established that her son will suffer consequences that can be distinguished from those ordinarily experienced by children whose parent relocates due to inadmissibility. Moreover, direct hardship to an applicant's child is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. The applicant has not shown that her son's hardship would elevate her husband's challenges to extreme hardship.

Accordingly, the applicant has not shown that her husband will endure extreme hardship should she be compelled to depart the United States.

Based on the foregoing, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to a qualifying relative, as required for a waiver under section 212(a)(9)(B)(v) 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 regarding a 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.