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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: FEB 2 9 2012 Office: LIMA, PERU File: [redacted]

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 (the Act), 8 U.S.C. section 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, 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. She was found to be inadmissible to the United States pursuant to 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 in the United States for one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen and has one U.S. citizen child. 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 24, 2009.

On appeal, counsel for the applicant asserts the Field Office Director failed to consider certain factors when determining extreme hardship, and that the applicant's spouse will experience hardshp rising to the level of extreme. *Form I-290B*, received on August 20, 2009.

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-
>
> . . . .
>
> (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.
>
> . . . .

The record indicates that the applicant entered the United States without inspection in February 2000 and remained until she departed on February 27, 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; developmental assessment of the applicant's son by the school he attends in Brazil; prescription records for the applicant's spouse; a statement from [redacted], of Pyramid medical services; a statement from [redacted]lated October 19, 2009; a psychological assessment of the applicant's son, undated; and a copy of the applicant's son's birth certificate.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec.

880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel for the applicant asserts on appeal that the applicant's spouse would experience emotional, physical and financial hardship if he relocated to Brazil with his spouse. *Brief in Support of Appeal*, November 19, 2009. He states that the applicant has lived in the United States for a long period of time, does not speak Portuguese and would lose his U.S. job if he relocated.

The record reflects that the applicant's spouse is a native of El Salvador and that he has resided in the United States for more than thirty years. There is no indication that, other than the applicant and their child, the applicant's spouse has any family or other ties to Brazil. The AAO notes that relocation would result in loss of employment for the applicant's spouse, and that the spouse does not speak Portuguese. Considering the hardships asserted along with the normal hardships associated with relocation, the AAO finds that the applicant's spouse would experience extreme hardship were he to relocate to Brazil.

Counsel for the applicant asserts on appeal that the applicant's spouse will experience emotional and financial hardship due to separation from the applicant. *Brief in Support of Appeal*, November 19, 2009. Counsel asserts the applicant suffered anxiety prior to his marriage to the applicant, that he

was prescribed medication for the condition in 2000 and 2001 and that the emotional impact of separation from the applicant has caused his condition to reoccur. Counsel asserts that the applicant's spouse's anxiety is further exacerbated by the fact that he is unable to visit his son, who resides in Brazil, and that he would be unable to support his son in the United States because his schedule as a taxi driver would not allow him to care for the child. Counsel further asserts that the applicant's spouse is having to support two households and is barely able to meet his financial obligations.

The applicant's spouse has submitted a statement asserting that his son is not adjusting to Brazilian culture and that he wants his son to know English so that he can be educated in the United States. *Statement of the Applicant's Spouse*, dated August 26, 2008.

The record contains prescription logs from a Walgreen's Pharmacy showing the purchase of various medications in 2000 and 2001. The record also contains a hand written note, dated October 19, 2009, from [redacted] stating that the applicant has a history of Anxiety which has been worse since the applicant's removal. However, no further detail is provided regarding the applicant's spouse's emotional or psychological state. There is also a statement from [redacted] MFTI, of Pyramid medical services, dated September 2, 2009, which states that the applicant's spouse was evaluated and that the results of a self-answered questionnaire indicates that he was experiencing symptoms of depression. However, [redacted] concludes that "due to the limited number of sessions, no formal diagnosis has been made." *Statement*, [redacted] dated September 2, 2009. The record reflects that the applicant's spouse has a history of anxiety and that he may experience a heightened emotional impact due to separation from the applicant. This hardship factor will be given consideration when aggregating the impacts on the applicant's spouse.

With regard to financial hardship the AAO notes that there is insufficient evidence to establish any uncommon financial impact of departure. Prior counsel asserted on appeal that the facts of the case are evident from the disclosed set of circumstances, but this is insufficient to establish that the applicant's spouse will experience significant financial impact. 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 record does not contain any evidence of the applicant's spouse's income, verification of his employment, documentation of his financial obligations or proof that he has been sending money to support the applicant in Brazil. Without evidence that somehow distinguishes the financial impact on the applicant's spouse from the common financial impacts of separation, the AAO cannot determine that he will experience uncommon financial hardship.

The record contains psychological assessments of the applicant's son, indicating that he has had difficulty adjusting to life in Brazil and is experiencing an emotional impact due to separation from his father. While the AAO can accept that the applicant's son will experience some emotional impact from acculturating to Brazil and being separated from his father, the AAO notes that, as discussed above, children are not qualifying relatives in this proceeding. As such, any impact to the

applicant or her children is only relevant to the extent that they indirectly impact the qualifying relative, in this case the applicant's spouse. The record does not indicate that the applicant's son is experiencing hardship impacts which rise to such a degree that they indirectly impact the applicant's spouse, who resides in the United States. The AAO recognizes that the applicant's spouse asserts that having to live apart from his son has caused him anxiety, but it would note that the applicant's son is not required to live in Brazil. The reason for this, the applicant's spouse claims, is that his employment and work shifts do not allow him to provide care for his child, but the record does not establish the applicant's spouse's employment, work hours or that he would be unable to afford child care for his son while he worked. In light of these observations, the AAO can recognize that the applicant's spouse would prefer to have the applicant and his son residing in the United States, but there is insufficient evidence of the degree and severity of any financial impact and as such the AAO cannot determine that he will experience a financial impact which rises above that which is normally associated with the removal of an inadmissible family member.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 rests 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.