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

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: Office: LIMA, PERU FILE: [redacted]

IN RE: MAR 30 2012 [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:

SELF-REPRESENTED

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 must 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 Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Lima, Peru, 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. On March 28, 2001, the applicant was admitted into the United States pursuant to a visitor visa valid for six months. The applicant departed the U.S. on July 28, 2007. On December 4, 2007, she attempted to enter the United States. Her entry was denied, however, and she was expeditiously removed. The applicant was found to be inadmissible to the United States under 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 U.S. for more than one year and seeking readmission within ten years of her departure from the U.S. She is also inadmissible under section 212(a)(9)(A) of the Act, for having been removed. The applicant is engaged to a U.S. citizen, and she is the beneficiary of an approved Form I-129F, Petition for Alien Fiancé(e) (Form I-129F). 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 a decision dated November 3, 2009, the director concluded the applicant had failed to establish that her U.S. citizen fiancé would experience extreme hardship if the applicant were denied admission into the United States. The waiver application was denied accordingly.

The applicant asserts on appeal that her fiancé will experience extreme emotional, physical and financial hardship if she is denied admission into the United States. In support of her assertions, the applicant submits letters written by her fiancé, as well as medical and child-custody documents. 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:

> (i) [A]ny 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.
>
> (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

Because the applicant was unlawfully present in the U.S. for more than one year between September 2001 and July 2007, and she is seeking readmission into the U.S. within ten years of

her removal from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides:

> Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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. *Matter of Mendez,* 21 I&N Dec. 296 (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,* 22 I&N Dec. 560, 565 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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).

Though hardships may not be extreme when considered abstractly or individually, the BIA 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.

The applicant is the beneficiary of a K visa, and that her fiancé is a U.S. citizen. The applicant's fiancé is a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

The record contains references to hardship the applicant's fiancé's daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to a qualifying relative's child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Accordingly, hardship to the applicant's fiancé's daughter will be considered only to the extent that it causes the applicant's fiancé to experience hardship.

Letters written by the applicant's fiancé reflect that he was born and raised in the United States, that he has worked as a sales representative for the same company for over 23 years, and that he receives health insurance benefits through his employer. The applicant's fiancé states he has high blood pressure and heart ailments that require medication and monitoring. He states further that he has two children from a prior marriage (now 17 and 20 years old), that his 17 year-old daughter lives with him, and that due to custody arrangements his daughter cannot move outside of the

country with him. The applicant's fiancé indicates he would lose his employment, medical insurance and house if he moved to Brazil, and he does not believe he would be able to find work in Brazil. He also states that his daughter does not get along with her biological mother, that her mother is unemployed and incapable of supporting her, and that the applicant is a mother-figure to his daughter. In addition, he states that he and the applicant love each other, they want to live together in the U.S., and the applicant's immigration situation is causing him stress and anguish.

Divorce decree information establishes the applicant's fiancé was awarded joint legal custody over his two children in 2004. The decree awards the applicant's fiancé physical custody of his son, born November 23, 1991. His ex-wife is awarded physical custody of their daughter, born December 29, 1994. The divorce decree indicates that the applicant's fiancé will have no child support obligations while there is true joint physical custody. Upon the son's emancipation as an adult, the applicant's fiancé shall pay child support for their daughter until she turns 18, or finishes secondary school.

Medical documentation reflects the applicant's fiancé has been diagnosed with coronary artery disease, hypertension and hyperlipidemia, and that the conditions are controlled with medication, diet and exercise. A doctor's letter states the applicant's fiancé needs to continue his care in the U.S., where technology to follow his conditions exists.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish the applicant's fiancé would experience emotional, financial and physical hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States and he remained in the U.S. The medical evidence does not state or demonstrate that the applicant's fiancé's health has been affected by his separation from the applicant. The evidence additionally fails to indicate that he is reliant upon the applicant for his medical care or needs. Evidence in the record indicates further that the applicant's fiancé is employed and the evidence fails to demonstrate he is experiencing financial hardship due to his separation from the applicant. The AAO recognizes that the applicant's fiancé is experiencing emotional hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, appears typical to individuals separated as a result of removal or inadmissibility, and does not rise to the level of extreme hardship.

The AAO finds further that the cumulative evidence in the record fails to establish that the applicant's fiancé would experience emotional, financial and physical hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the United States, and he relocated to Brazil to be with her. The record establishes the applicant's fiancé requires medication and monitoring of heart-related health conditions. The record lacks documentary evidence, however, to corroborate the assertion that he would be unable to obtain adequate medical care and treatment for his conditions in Brazil. The record also lacks evidence to corroborate the assertion that the applicant's fiancé owns a home or would be unable to find employment in Brazil, and the evidence fails to demonstrate that the applicant would be unable to support the couple in Brazil. The divorce decree documentation contained in the record fails to corroborate the assertion that the applicant's fiancé has physical custody of his 17 year-old

daughter, or that he would suffer hardship due to the physical custody arrangement if he moved to Brazil. The record also lacks evidence to corroborate the assertion that his daughter must live with him due to her biological mother's personal circumstances, or to corroborate the claim regarding the length of the applicant's fiancé's employment.

Although the applicant's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

Pursuant to section 212(a)(9)(A)(i) of the Act, the applicant also must request permission to reapply for admission, because she is barred from admission into the United States for five years from the date of her removal (in this case through December 4, 2012). The record reflects that with her Form I-601 waiver application, the applicant filed a Form I-212 application. The Form I-212 was not adjudicated by the director and has not been separately appealed.[1]

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 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.

[1] It is noted, however, that the BIA held in *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964), that a Form I-212 was properly denied, in the exercise of discretion, to an alien who was mandatorily inadmissible to the United States under another section of the Act, as no purpose would be served in granting the Form I-212 application.