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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

H6

[redacted]

Date: SEP 2 7 2012 Office: LIMA, PERU FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of Brazil who entered the United States on May 21, 2000, on a B-2 nonimmigrant visa. In June 2000, shortly after entering the United States, the applicant commenced unauthorized employment. In January 2002, the applicant departed the United States. In December 2002, the applicant reentered the United States and departed in January 2006. In April 2006, the applicant attempted to reenter the United States; however, based on her previous overstays, she was ordered removed from the United States, and expeditiously removed on April 15, 2006. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. On February 20, 2008, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On May 28, 2008, the Field Office Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative. *Decision of the Field Office Director*, dated May 28, 2008. On June 27, 2008, the applicant appealed the Field Office Director's decision with the AAO. On October 19, 2010, the AAO dismissed the applicant's appeal. On November 16, 2010, the applicant filed a motion to reopen the AAO's decision.

In its October 19, 2010 decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under sections 212(i) and 212(a)(9)(B)(v) of the Act. On motion, the applicant's husband states he moved to Brazil and he is suffering hardship there. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record in support of the applicant's motion includes, but is not limited to, statements from the applicant's husband. The entire record was reviewed and all relevant evidence considered in rendering this decision.

As the applicant has submitted new documentary evidence to support her claim, the motion to reopen will be granted.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
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> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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-
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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 [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 [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.

Waivers of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act are dependent first 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 her stepdaughter 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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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.

In the present case, the record indicates that on two separate occasions, the applicant overstayed her authorization to remain in the United States as a nonimmigrant visitor. Shortly after her first entry in 2000, she commenced unauthorized employment. In April 2006, the applicant attempted to reenter the United States; however, based on her previous overstays, she was ordered removed from the United States, and was expeditiously removed on April 15, 2006. Based on the applicant's unauthorized employment shortly after entering on a B-2 nonimmigrant visa, and the applicant's failure to disclose her intention to seek employment to a consular officer when she applied for her nonimmigrant visa, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. Additionally, since the applicant accrued over one year of unlawful presence between November 2000 and January 2002, and between June 2003 and January 2006, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year, and seeking admission within 10 years of her departure from the United States. The applicant does not dispute these findings.

The record contains references to hardship the applicant's stepdaughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child 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 sections 212(i) and 212(a)(9)(B)(v) of the Act, and hardship to the applicant's stepdaughter will not be separately considered, except as it may affect the applicant's spouse.

The applicant's husband states he has been living in Brazil since February 18, 2009, and he is suffering emotional hardship in being separated from his family in the United States. Additionally, he claims that before moving to Brazil, he filed for bankruptcy and he also has defaulted on his student loan. He states that he is working as a private English teacher, and until the Brazilian government grants him permanent resident status, he cannot look for other employment. He adds that since he is over 40 years old, it will be difficult to find employment, because age discrimination for employment purposes is common in Brazil. He claims that in the United States he worked as a process engineer in thermoplastics materials, but that industry is nonexistent where they live in Brazil. Since he has been in Brazil, he is not contributing to Social Security, which will cause him hardship when he retires, and he is unable to help his daughter with her college expenses.

The applicant's husband claims that he suffers from kidney stones, Barrett's disease, high blood pressure, cataracts and glaucoma in his left eye, and he has an artificial lens in his right eye. Medical documentation in the record establishes that the applicant's husband has kidney stones, he has had multiple surgeries to treat the kidney stones, and he suffers from Barrett's disease. He claims that Brazil lacks good healthcare and the lack of security also causes him hardship.

The AAO acknowledges that the applicant's husband is a U.S. citizen and that relocation abroad has involved some hardship. The applicant's husband, however, is currently employed in Brazil and it has not been established that he has had difficulty adjusting to the culture there. Though the applicant's husband refers generally to financial difficulties, the record does not contain evidence corroborating his statement that he is suffering financial hardship. Additionally, though the applicant's husband expresses security

concerns about Brazil, no documentary evidence was submitted supporting his claim. Further, the record does not establish that the applicant's husband cannot receive treatment for his medical conditions in Brazil or that he must return to the United States to receive treatment. Though the applicant's husband claims he is experiencing emotional hardship as a result of being separated from his family, there is no evidence in the record of other hardships the applicant's spouse has experienced in Brazil. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that her husband is suffering extreme hardship in Brazil.

In addition, the record fails to establish extreme hardship to the applicant's husband if he returns to the United States. The applicant's husband states that when he was separated from the applicant, he suffered anxiety and depression. In an affidavit dated January 14, 2008, the applicant's stepdaughter claims that when the applicant and her father were separated he was "in such a depression that [she] had never seen before." Additionally, in a statement dated February 10, 2008, the applicant states her husband needs her help with his medical issues. As noted above, medical documentation in the record establishes that the applicant's husband has kidney stones and Barrett's disease. The record does not include evidence detailing the effects of the applicant's husband's medical conditions or explaining the type of care he requires.

The AAO acknowledges that the applicant's husband suffered emotional difficulties in being separated from the applicant. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. With respect to the applicant's spouse's medical hardship, although the record establishes that he suffers from medical issues, the medical documentation in the record does not establish that separation from the applicant elevated his symptoms or that he requires the applicant's assistance because of his medical conditions. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he returns to the United States.

In this case, the record does not contain sufficient evidence to show that the 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 her U.S. citizen spouse as required under section 212(i) and section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 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 AAO's dismissal of the appeal is upheld and the underlying waiver application is denied.

ORDER: The motion is granted and the previous decisions of the Field Office Director and the AAO are affirmed. The application is denied.