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U.S. Citizenship
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FILE:

Office: ST. LOUIS

Date: AUG 23 2007

IN RE:

[Redacted]

APPLICATION: Application for waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), St. Louis, Missouri, 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 was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his spouse, [REDACTED] a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his wife.

The applicant and [REDACTED] were married in the United States on September 27, 2002. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on February 14, 2003. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 8, 2005.

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated July 13, 2005.

On appeal, counsel asserts that the decision was made based on an incomplete record and submits new evidence of extreme hardship to the applicant's spouse. Counsel also requests an oral argument.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) In general.— . . . [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Court documents in the record reflect that the applicant pled guilty in the Circuit Court of Rhea County, Tennessee on February 4, 2002 to Theft of Property over \$1,000 in violation of section 39-14-403 of the Tennessee Codes Annotated (T.C.A.). Under Tennessee law, this violation is a Class D felony that carries a sentence of not less than two or more than four years incarceration. *See T.C.A. §§ 39-14-105, 40-35-112.* In conjunction with his plea, the applicant's case was continued for a period of two years and subsequently dismissed upon the successful completion by the applicant of a probationary program. Counsel has not asserted that the OIC erred in finding the applicant's offense a crime involving moral turpitude that renders him inadmissible.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if—

....

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 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. 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 an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

The AAO notes further, however, that U.S. court decisions have repeatedly 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event

that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

On appeal, counsel asserts that the [REDACTED] would experience extreme hardship as follows if she does not accompany the applicant to Brazil:

1. [REDACTED] would suffer extreme emotional hardship from being separated from the applicant.
2. [REDACTED] would be unable to afford the mortgage payments on the home she and the applicant have purchased or pay the debts she and the applicant have accumulated in the United States.

Counsel contends that [REDACTED] would experience extreme hardship as follows if she returned to Brazil with the applicant:

1. The applicant's spouse is receiving medical treatment for infertility in the United States and would be unable to obtain the same quality of care in Brazil.
2. The applicant's spouse would have to abandon her career as a financial underwriter for an insurance company and would be unlikely to find similar employment in Brazil because of differences in the Brazilian health care system and because she does not speak Portuguese.
3. [REDACTED] would suffer emotional hardship from being separated from her immediate family and not being able to care for her aging (and ailing) parents and younger brother.
4. [REDACTED] would have to abandon charitable causes to which she currently volunteers time and money.
5. [REDACTED] and her husband are Presbyterians and would be religious minorities in Brazil.

The record includes documentation of the applicant's criminal record, affidavits from the applicant and his spouse, tax and other financial records for the applicant and his spouse, [REDACTED]'s medical records, letters from [REDACTED] family members, letters from [REDACTED] supervisors and colleagues, and reports of country conditions in Brazil. The entire record was reviewed and considered in rendering a decision on the appeal.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that [REDACTED] faces extreme hardship if her husband is not granted a waiver of inadmissibility.

The AAO recognizes that [REDACTED] a native of the United States, would suffer extreme hardship if she relocated to Brazil with the applicant. Most significantly, [REDACTED] does not speak Portuguese and has no family or other ties in Brazil. She would be separated from her immediate family and compelled to abandon her career as a financial underwriter in the medical insurance industry. The AAO also recognizes that the applicant would suffer emotionally as a result of separation from the applicant if she chooses to remain in the United States. Counsel has asserted that [REDACTED] would suffer financially as a result of the loss of the applicant's income, but has not submitted specific evidence showing the applicant's current income and the extent to which [REDACTED] relies on this income. There is, however, ample evidence in the record showing that [REDACTED] is employed and able to support herself financially if she remains in the United States. Mrs. [REDACTED] situation is typical of individuals separated as a result of removal or inadmissibility and does not rise

to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

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 failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Counsel's request for oral argument is also denied. The AAO has sole authority to grant or deny a request for oral argument. 8 C.F.R. § 103.3(b)(2). Counsel contends that oral argument is necessary because "there has been no opportunity for Mr. and Mrs. [REDACTED] or anyone on their behalf, to discuss the extreme hardships which [REDACTED] will suffer if she is forced to relocate to Brazil." However, the AAO finds that the applicant has had sufficient opportunity to establish extreme hardship through the submission of evidence on appeal.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *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.