

identifying information deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

Office: LIMA, PERU

Date:

JUN 05 2008

IN RE:

Applicant:

[Redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), and 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:

[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), Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

It is noted that the applicant, through counsel, requested a 30-day extension to submit a brief and/or evidence, but nothing was submitted within 30-days. On May 7, 2008, in response to a facsimile from the AAO, counsel indicated that he would not be submitting further evidence. Therefore, the record must be considered complete.

The record reflects that the applicant is a native and citizen of Brazil who was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by presenting a fraudulent nonimmigrant visa, and 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 more than one year and seeking readmission within 10 years of her last departure from the United States. The record indicates that the applicant is the spouse of a naturalized United States citizen and that she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her husband.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated March 20, 2006.

On appeal, the applicant, through counsel, claims that "[t]he petitioning United States Citizen has suffered Extreme Hardship as a result of this separation from his wife and continues to do so to this day.... The determination that the beneficiary 'is undeserving of favorable consideration' is an abuse of the discretion granted to the Secretary." *Addendum to Form I-290B*, filed April 24, 2006.

The record includes, but is not limited to, counsel's statement, a declaration from the applicant's husband, and prescription notes from J [REDACTED] M.D., dated April 13, 2006. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
 - (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e)) prior to the commencement

of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

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.

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [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 Attorney General [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....

The record indicates that the applicant is a native and citizen of Brazil who initially entered the United States in 1980 without inspection. On an unknown date, the applicant departed the United States. In 1994, the applicant attempted to enter the United States by presenting a fraudulent nonimmigrant visa, and she was then deported from the United States. On September 25, 2000, the applicant entered the United States on a B-1/B-2 nonimmigrant visa with authorization to remain in the United States until March 24, 2001. On April 25, 2001, the applicant married [REDACTED], a lawful permanent resident of the United States, in Massachusetts. On December 28, 2001, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On March 24, 2004, the applicant's husband became a United States citizen. On July 13, 2004, the applicant's husband filed a second Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On December 28, 2004, the applicant's first Form I-130 was approved. On September 10, 2005, the applicant departed the United States. On December 10, 2005, the applicant filed a Form I-601. On March 20, 2006, the OIC denied the applicant's Form I-601, finding the applicant attempted to enter the United States by presenting a fraudulent nonimmigrant visa, she accrued more than 365 days of unlawful presence, and she failed to establish extreme hardship would be imposed on her spouse. On May 1, 2006, the District Director, Boston, Massachusetts, denied the applicant's second Form I-130 for abandonment and denied her Form I-485 because there was no pending visa petition.

The applicant accrued unlawful presence from March 24, 2001, the date the applicant's authorization to remain in the United States expired, until July 13, 2004, the date the applicant filed her Form I-485. The applicant is attempting to seek admission into the United States within 10 years of her September 10, 2005 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

Additionally, the applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C) of the Act. Waivers under sections 212(i) and 212(a)(9)(B)(v) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) and section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

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 applicant, through counsel, claims that her husband has suffered extreme hardship since she departed the United States. *Addendum to Form I-290B, supra*. Dr. [REDACTED] states the applicant's husband has depression and he "started on meds today." *Prescription note from [REDACTED], M.D.*, dated April 13, 2006. The AAO notes that other than the prescription note from [REDACTED] there are no professional psychological evaluations for the AAO to review to determine if the applicant's husband is suffering from any depression or anxiety or whether any depression and anxiety is beyond that experienced by others in the same situation. The applicant's husband states the applicant "has had a hard life she lost her first husband by his death and she was diagnosed with kidney cancer and was required to remove her kidney so that she would have a chance to live a longer life. [They] are uncertain how long she has to live because her cancer could return at any time and she has all her doctors here in the United States that [sic] are aware of her case." *Declaration from [REDACTED]*, undated. The AAO notes that there was no documentation submitted establishing that the applicant has suffered from any illnesses. Additionally, as noted above, hardship the applicant herself experiences upon removal is irrelevant to section 212(i) and **section 212(a)(9)(B)(v) waiver proceedings**. The AAO notes that it has not been established that the applicant's husband has no transferable skills that would aid him in obtaining a job in Brazil. Additionally, the applicant's husband is a native of Brazil, who spent his formative years in Brazil, he speaks Portuguese, and there is no evidence that the applicant and her husband have no family ties in Brazil. Moreover, the AAO notes that the applicant's husband did not provide a statement or an affidavit regarding the extreme hardship he would suffer if he joined the applicant in Brazil. The AAO finds that the applicant has failed to establish extreme hardship to her United States citizen husband if he accompanies the applicant to Brazil.

In addition, the applicant does not establish extreme hardship to her husband if he remains in the United States, maintaining his employment and access to medical care. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states they "had also purchased a house in the month that [the applicant] returned to Brazil. Now that she might be required to stay in Brazil for an extended length of time it has made for an extreme hardship and unusual hardship because [he is] here in the United States working to support [himself] and [their] home and also having to support her in Brazil. [They] feel that this is an extreme and unusual hardship financially and emotionally because [they] are uncertain how long she will have to remain in Brazil...[They] are very close to each other and [they] have been through a lot together in life." *Id.* The AAO notes that there was no evidence submitted establishing that the applicant provides any support to her husband and the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he remains in the United States.

United States 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 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 *Hassan, supra*, the Ninth Circuit Court of Appeals 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 AAO recognizes that the applicant's United States citizen husband has endured hardship as a result of separation from the applicant. However, his situation is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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 for application for waiver of grounds of inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) 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.