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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: BALTIMORE

Date:

SEP 19 2008

IN RE:

[REDACTED]

APPLICATION:

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland 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 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 sought to procure admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an Petition for Alien Relative (I-130) filed by his U.S. citizen spouse¹ and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his spouse.

The record reflects that the applicant was detained and ordered to appear in deportation proceedings upon seeking admission to the United States at Los Angeles, California using a photo-substituted passport and tourist visa bearing the name of [REDACTED] on September 8, 1990. The applicant was released on bond. The applicant failed to appear at his hearing before an immigration judge on November 15, 1990, and the proceedings were terminated. The applicant and his spouse, [REDACTED] were married on April 12, 2000 in the United States. The applicant's spouse filed the Form I-130 petition and the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on September 26, 2000. The applicant subsequently filed an Application for Waiver of Grounds of Inadmissibility (Form I-601).

The district director 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 District Director*, dated February 9, 2004.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to show that his spouse would suffer extreme hardship if the waiver application is not approved. Counsel contends that the applicant's spouse would suffer emotional hardship from separation from the applicant because of her mental health condition and financial hardship because the applicant's business would be forced to close without him. The record includes, among other documents, an affidavit from the applicant; affidavits from the applicant's spouse; a psychological evaluation of the applicant's spouse by [REDACTED] copies of documents relating to the applicant's business; copies of tax returns; copies of settlement documents for the purchase of the houses owned by the applicant and his spouse; and the U.S. State Department's 1999 Report on Human Rights Practices for Brazil. The entire record was considered in rendering a decision on the appeal.

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

¹ The AAO notes that the Form I-130 contained in the record has not been stamped approved, nor do CIS electronic records indicate that it has been approved. If the underlying petition has not been approved, there would be nothing to support the Forms I-485 and I-601 and both should be denied for that reason. The AAO will, however, review the appeal before it as though the Form I-130 were approved, as both the Form I-485 and Form I-601 have been adjudicated by the district office.

- (i) 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.

As stated above, the record reflects that the applicant was apprehended seeking admission to the United States at Los Angeles, California using a photo-substituted passport and tourist visa bearing the name of [REDACTED] on September 8, 1990. The applicant has not disputed that he is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides 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 alien 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.

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The only qualifying relative is the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

U.S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

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.

In her affidavits, the applicant’s spouse indicates that she “had been very ill before my treatment, after having arthritis for several years.” She indicates that she has limited family ties in Brazil. She asserts that her business degree in Brazil is not the equivalent of a business degree in the United States, and that she is dependent on income from the applicant’s business to meet the couple’s financial obligations. She states that conditions in Brazil are not good.

In her evaluation, [REDACTED] states that the applicant’s spouse once supported herself by cleaning houses and providing childcare services, but reported that she would be unable to manage the applicant’s business alone. [REDACTED] indicates that the applicant’s spouse’s “family psychiatric history is negative as is her personal history of mental illness.” [REDACTED] indicates that the applicant’s spouse reported that she was depressed due to anxiety over the applicant’s status, but without suicidal ideation or plans. [REDACTED] concludes that the loss of the applicant would cause the applicant’s spouse a “significant reactive depression.”

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant’s spouse will experience emotional hardship if she chooses to remain in the United States, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter from [REDACTED] is based on a single interview between the applicant’s spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s spouse or any history of treatment for the adjustment disorder allegedly suffered by the applicant’s spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship. In

addition, it is noted that [REDACTED] indicates in her assessment that the applicant does not have any history of mental illness.

The AAO acknowledges that the applicant owns a contracting company and that he and his spouse own two houses, but there is inadequate evidence that any financial hardship she would experience, when combined with other hardship factors, is extreme. The applicant's spouse has indicated that she cannot manage the applicant's business without him, but the record reflects that she has business experience and has supported herself with business activities in the past. There is insufficient evidence showing that, for physical or other reasons, she would be unable to do so again. Furthermore, the evidence does not show that the applicant would be unable to continue support of his spouse if he returned to Brazil. Regardless, it is noted that the mere loss of current employment or the inability to maintain one's present standard of living or pursue a chosen profession does not constitute extreme hardship. *See Matter of Pilch*, 21 I. & N. Dec. 627, 631 (BIA 1996).

The AAO acknowledges the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant's spouse, and as demonstrated by the other evidence in the record, is the common result of removal or inadmissibility. 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.

The applicant has also failed to demonstrate that his spouse would experience extreme hardship if she relocated to Brazil. The applicant's spouse is a native of Brazil, and the record shows that her mother and siblings still live there. The evidence of general country conditions in Brazil does not show any specific hardship the applicant would experience there.

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 his U.S. citizen spouse as required under section 212(i) 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.