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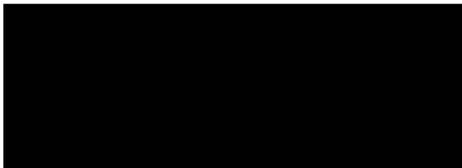
Date: SEP 21 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Officer in Charge (OIC), Lima, Peru, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Brazil, the husband of a U.S. citizen, and the beneficiary of an approved Form I-130 petition.

Two waiver applications have been filed in this case. The first was denied on April 1, 2005. No appeal from that decision was timely filed. The second application was denied on February 3, 2007 and is the subject of this appeal.

The OIC found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife. The OIC also found that the applicant had failed to establish that denying the waiver application would cause extreme hardship to his U.S. citizen spouse and denied the application.

On appeal, counsel asserted that the evidence in the record demonstrates that failure to approve the waiver application would result in extreme hardship to the applicant's wife. Although counsel did not appear to contest the OIC's determination of inadmissibility, the AAO will review that determination.

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

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 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, 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.

The record contains a Memorandum Report of an interview of the applicant in Rio de Janeiro, Brazil, on July 26, 2006. The applicant's presence in Brazil indicates that, by that date, the applicant had left the United States. At that interview, the applicant stated that he had entered the United States during August of 1989 for tourism and to visit friends, that he stayed until August 1992, and that he subsequently entered the United States during June of 1992, and remained until June 2002. The applicant further stated that he was granted voluntary departure at some point but did not leave

in accordance with that agreement. The AAO notes that those two periods during which the applicant admitted to being in the United States overlap.

On the previous Form I-601 waiver application, the applicant stated that he had lived in the United States from 1989 to 2002. On the instant Form I-601 application, the applicant stated that he lived in the United States from 1992 to 2002.

In a letter dated November 10, 2005, counsel stated that the applicant entered the United States during June 1992 as a B1/B2 visitor for pleasure, that he was arrested for overstaying his visa during January of 1994, that he was released on personal recognizance and granted voluntary departure on August 14, 1995, but did not leave the United States until June 2002. The AAO finds that counsel's chronology is credible and that it explains, corrects, and reconciles the applicant's conflicting chronologies.

Pub. L. 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides at section 309,

(a) IN GENERAL.-Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the "title III-A effective date").

At section 301(b)(3), the IIRIRA provides,

TREATMENT OF UNLAWFUL PRESENCE BEFORE EFFECTIVE DATE.-In applying section 212(a)(9)(B) of the Immigration and Nationality Act, as inserted by paragraph (1), no period before the title III-A effective date shall be included in a period of unlawful presence in the United States.

The IIRIRA was passed by the 104th United States Congress on Sept. 30, 1996. The record contains no indication that the applicant ever had any legal status in the United States. Therefore, for the purpose of this inadmissibility provision, the applicant's illegal presence began on April 1, 1997 and continued until June 2002, a period of more than one year. The AAO finds, therefore, that the applicant is inadmissible for ten years after the date he left the United States during June 2002, which ten years has not yet ended. The remainder of this decision will be concerned with whether waiver of the applicant's inadmissibility is available and whether it should be granted.

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

The Attorney General [now Secretary of Homeland Security] 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 himself or to any of his wife's family members is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. 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 nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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).

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 a letter dated July 20, 2006 the applicant's wife stated that she is obliged to choose between living with her husband in Brazil or living with her mother and daughters. She stated that she had been abused by both of her parents and by her previous husband, which she asserted somehow exacerbates her dilemma.

The record also contains an autobiography of the applicant's wife, apparently published as the fifth chapter of a book related to dance. In it, she praised her early family life, including that with her previous husband, stating, "My marriage to [my previous husband] brought with it considerable stability and order."

The applicant's wife stated that her older daughter, [REDACTED], has been in counseling and is on medication for depression and anxiety. An undated letter from [REDACTED] confirms that her family life has been tumultuous, states that her mother's physical, emotional, and psychological health is suffering from her inability to bring the applicant to the United States, praises the applicant, and asks that the waiver application be approved. However, it does not address [REDACTED] alleged depression and anxiety or any effect that denial of the waiver application might have on her emotional state.

In support of the assertion that [REDACTED] is in counseling and on medication, the applicant submitted an intake questionnaire and progress notes, both dated April 6, 2004. Those documents show that, on that date, [REDACTED] consulted [REDACTED], a family practitioner in Cincinnati, Ohio, for treatment of a recurrence of social anxiety disorder. The notes indicate that [REDACTED] has suffered from social anxiety disorder since age 16, had gone to a college counselor and had been in group therapy, and had previously been on an anti-anxiety medication for six months. [REDACTED] prescribed the same anti-anxiety medication and a sleep medication. There is no other evidence in the record pertinent to contacts between [REDACTED] and mental health professionals.

The applicant's wife further stated that her younger daughter, [REDACTED], was a rape victim, cuts herself, attempted suicide during 2006, and is under the care of a psychologist. A letter, dated August 15, 2005, from [REDACTED] confirms that she has had symptoms of, and been treated for, depression and other emotional problems. A report of an examination on March 9, 2004 at New Vistas Behavioral Health Services indicates that [REDACTED] was examined by staff psychiatrist [REDACTED] on that date, and reported a history of symptoms of depression and other emotional issues. [REDACTED] diagnosed [REDACTED] with Bipolar Disorder and Borderline Personality Disorder, prescribed anti-depressant drugs, and scheduled another appointment for May 11, 2005. [REDACTED] did not attend the second appointment and the record contains no indication of any other contact between her and any mental health professional.

The applicant's wife stated that she herself has battled depression for several years. An Initial Assessment, dated May 20, 2004, from [REDACTED] a licensed professional counselor at a counseling center in Asheville, North Carolina, confirms that the applicant's wife indicated to a counselor that she had suffered from insomnia, nightmares, depression, and stress during the few weeks previous. A letter, dated August 20, 2004, also from [REDACTED] states that the applicant's wife was referred to her after a breakdown during a religious ceremony, and that the applicant's wife's major depressive episode was caused by her separation from the applicant.

The applicant's wife stated that she is the "sole caregiver and emotional confidant" of her mother, who has suffered a stroke, has only one kidney, and suffers from mild dementia. The applicant's wife stated that her siblings are estranged from their mother. The record contains notes from a medical office pertinent to examinations of the applicant's wife's mother. Those notes confirm that the applicant's wife's mother suffered a stroke, has chest pain, palpitations, and memory loss. Notes from May 26, 2005 indicate that the patient was accompanied by her daughter, [REDACTED].

The evidence that another daughter, [REDACTED], accompanied her mother to the doctor's office on May 26, 2005, is difficult to reconcile with the applicant's wife's statements, made in her July 20, 2006 letter, that she is her mother's sole caregiver, and that all of her siblings are estranged from their mother.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with independent objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant's wife stated that she loves the applicant, who is a friend and father figure to her children. She stated that being separated from him has been stressful. She stated that she suffers from hypoglycemia, exacerbated by stress, and that she suffered a heart attack on December 29, 2005, which she attributes to stress.

Finally, the applicant's wife stated that she has accumulated debt from her trips to Brazil to see the applicant and from the cost of international calls. She stated, "I have a decent paying job and live a simple life but I cannot withstand the financial burden that is accumulating.

In another, undated, letter, the applicant's wife reiterated many of the statements in her July 20, 2006 letter. In that letter she also stated, "[The applicant] never took from this country, living off his inheritance in Brasil [sic], paying my daughter's college tuition, medical expenses for my child and me just to name a few."

Although the applicant's wife asserted that she is unable to withstand her current financial burden and is accumulating debt, she provided no corroborating evidence in support of those assertions. The record does not demonstrate her annual income or the amount of her recurring expenses. Further, the applicant's wife stated, in her undated letter, that the applicant lives on an inheritance. The applicant's wife did not address whether, now that the applicant is living in Brazil, he is still able to help the applicant's wife and her family with their expenses.

Although the AAO accepts that living separately from one's spouse is likely to result in some degree of financial hardship, the evidence in the record is insufficient to demonstrate that denial of the waiver application would result in financial hardship to the applicant's wife which, when considered together with the other hardship factors in this matter, would rise to the level of extreme hardship.

The applicant's wife claimed that the failure to approve the waiver application would cause emotional trauma to her daughters. The AAO notes, again, that hardship to the applicant's wife's daughters is not directly relevant to any material issue in this matter. The only relevance of such hardship would be if it would cause demonstrable hardship to the applicant's wife, herself.

Further, the applicant's wife's letter does not indicate that the older daughter's emotional problems were caused by the applicant leaving or would be assuaged by the applicant's return, but, rather, cites it as a reason the applicant's wife is unable to leave the United States.

Pertinent to the younger daughter's emotional difficulties, the record contains a screening assessment and a treatment plan, both dated February 2, 2005, and a note that shows that she did not appear for an appointment on May 11, 2005. [REDACTED] did not indicate that her disorders were caused by the applicant's leaving the United States or would be assuaged by his return.

Under these circumstances, the AAO finds that the evidence does not demonstrate that, if the applicant's wife remained in the United States, denial of the waiver application would cause such hardship to her daughters that it would result in emotional hardship to the applicant's wife which, when considered with the other hardship factors in this matter, would rise to the level of extreme hardship.

The August 20, 2004 letter from [REDACTED] stated that the applicant's wife's separation from the applicant triggered her major depressive episode. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted report appears to be based on a single interview between the applicant's wife and the counselor. The record fails to reflect an ongoing professional relationship between the counselor and the applicant's wife or any history of treatment for her disorder. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED]'s findings speculative and diminishing the report's value in determining extreme hardship. The evidence is insufficient to demonstrate that, if the waiver application were denied and the applicant's wife remained in the United States, her separation from her husband would cause her to suffer emotional or psychological hardship which, when considered with the other hardship factors in this case, would rise to the level of extreme hardship.

The applicant's wife stated that she suffers from hypoglycemia that is exacerbated by stress, and that she suffered a heart attack as a result of stress from her husband's absence. However, the applicant provided no corroborating evidence pertinent to his wife's hypoglycemia and heart attack, or their causes. Given that lack of evidence, the AAO cannot find that if the waiver application is denied and the applicant's wife remains in the United States, she will suffer medical hardship which, when considered with the other hardship factors in this case, rises to the level of extreme hardship.

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 wife faces extreme hardship if the applicant's waiver application is not granted and she remains in the United States. Rather, the record suggests that, in that event, she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

A separate issue is the hardship that would result to the applicant's wife if she departed the United States to live with the applicant in Brazil. Although evidence in the record appears to contradict the

applicant's wife's assertion that she is her mother's sole caregiver, it still amply demonstrates that her mother is in fragile health. Under these circumstances, leaving the United States to live in Brazil would result in considerable hardship to the applicant's wife.

Further, both of the applicant's wife's children have been treated for emotional issues, and at least one appears to be in fragile emotional health. The evidence pertinent to that issue is discussed above. Even in a more typical situation, leaving one's children behind when departing for a foreign country would occasion some degree of hardship. For the applicant's wife to leave her daughters at this juncture would also seem likely to occasion great hardship to the applicant's wife, considerably more than in a typical case. On the balance, the AAO finds that, if the applicant's wife left the United States to live with the applicant in Brazil, she would suffer hardship that would rise to the level of extreme hardship.

However, as was noted above, the applicant has failed to demonstrate that, if the waiver application were denied and his wife remained in the United States, she would suffer hardship that would rise to the level of extreme hardship. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is

therefore unavailable. The AAO need not, therefore, consider whether this is an appropriate case in which to exercise its discretion to grant a waiver.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.