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FILE:

Office: LIMA, PERU

Date: DEC 05 2006

IN RE:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Officer-in-Charge, Lima, Peru. The matter 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)(9)(B)(i)(II) of the Immigration and Nationality Act (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 applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that based on the available facts, the applicant failed to establish that her qualifying relative would undergo extreme hardship through her continued inadmissibility. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated April 1, 2005.

On appeal, the applicant's spouse asserts that he and the applicant have a child together and are both suffering from depression because of being separated. He states that he is suffering extreme hardship as a result of the separation. *See Letter from Applicant's Spouse*, dated May 13, 2005.

The record includes, but is not limited to the following documents: a letter from the applicant's spouse; a statement from the applicant's spouse; and two doctor's notes. The entire record was reviewed and considered in rendering a decision on the appeal.

In the present application, the record indicates that the applicant entered the United States without inspection in September 1997. The applicant remained in the United States until July 2003. Therefore, the applicant accrued unlawful presence from September 1997, when she entered the United States until July 2003, when she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within 10 years of her July 2003 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) 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-

....

(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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences or her child experiences due to separation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse. 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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Brazil or in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The applicant's spouse does not address the possibility of relocating to Brazil with his wife and child. He does state in his letter, dated May 13, 2005, that he has been visiting his wife and child on a bimonthly basis and this absence from his work is causing him great financial loss. The applicant's spouse does address the hardship he is experiencing as a result of being separated from the applicant. He states that he wants to be reunited with his family and that being apart from his wife and 4-month-old baby is a very heavy burden on him. He states that he owns a business, Dias Contracting LLC, where he employs twenty workers. He states that he has become very depressed with his situation and will need to seek medical treatment for himself. The AAO notes that the applicant's spouse did not submit any documentation regarding his business and the financial losses he has experienced. The applicant's spouse must submit documentation to support his claims.

The AAO notes that the applicant's spouse did submit a letter from a medical doctor in Connecticut, Dr. Anton Fry, dated August 9, 2004. The letter states only that he has treated both the applicant and her spouse and that it will cause an emotional hardship for them to be apart. Although the input of any health professional is respected and valuable, the AAO notes that the submitted letter fails to reflect an ongoing relationship with the applicant and her spouse, it does not describe the specifics of any treatment received and it is not clear what type of medicine the doctor practices. Therefore, the AAO finds that Dr. Fry's finding is speculative and the letter will be given diminished weight in determining extreme hardship.

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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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 spouse will endure hardship as a result of being separation from the applicant. However, the current record reflects that his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship. The applicant's spouse did not address the possibility of relocating to Brazil nor did he submit the necessary documentation to establish that he would experience extreme hardship as a result of relocating to Brazil. Furthermore, the applicant's spouse did not submit the necessary documentation to show that he would suffer extreme hardship as a result of being separated from the applicant.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 section 212(a)(9)(B) 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.