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U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: LIMA, PERU

Date: OCT 06 2006

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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 officer in charge (OIC) in Lima, Peru denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] (Ms. [REDACTED]), is a native and citizen of Brazil who entered the United States without inspection in May 1, 2000, and filed an application for waiver of ground of inadmissibility (Form-601) on October 25, 2004. In order to remain in the United States with her naturalized U.S. citizen husband, [REDACTED] (Mr. [REDACTED]), the applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), for being unlawfully present for more than one year, departing the United States, and then seeking admission.

Ms. [REDACTED] first entered the United States on or about May 1, 2000. She married Mr. [REDACTED] on June 29, 2002. In 2004 she traveled to Brazil to consular process and submit her Form I-601 waiver.

The OIC determined that the applicant is inadmissible under § 212(a)(9)(B) for being unlawfully present for more than one year, departing the United States, and seeking admission. The OIC also concluded that the applicant had failed to establish that extreme hardship would be imposed on her qualifying relative, her husband, and denied the Form I-601. *Id.*

On appeal, counsel submits a brief, a supplemental affidavit from Mr. [REDACTED] an affidavit from Mr. [REDACTED]' daughter, photographs, and contracts from Mr. [REDACTED]' business. Counsel asserts that all of the relevant factors in Mr. [REDACTED]' case, in their totality, amount to extreme hardship. Counsel asserts that having to leave his close family ties, his business, and his friends in the United States to go live with his wife in Brazil would amount to extreme hardship on the applicant. Counsel further asserts that having to stay in the United States and live apart from his wife would also amount to extreme hardship due to the length of their marriage and the depth of their commitment to each other.

In addition to the documents submitted on appeal, the record of proceeding before the AAO contains: hardship statements from Mr. [REDACTED] and Ms. [REDACTED] photographs of Mr. [REDACTED] with his wife, daughter, son, and friends; tax records; affidavits from friends and family, including his daughter, his ex-wife, fellow Masons, and his pastor, attesting to the strength of his bond with Ms. [REDACTED] and the strength of his bond with his family and friends in the United States; employment verification documents; documents relating to Mr. [REDACTED] business; and the 2003 U.S. Department of State Country Report on Human Rights Practices in Brazil.

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 sets 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.

The AAO thoroughly reviewed all of the affidavits and the documents in the record. The AAO notes that the applicant must establish both extreme hardship to her spouse if he accompanies her to live in Brazil and, in the alternative, extreme hardship to him if he remains in the United States and they are separated from each other. The AAO finds that [REDACTED] has not established that her husband would suffer extreme hardship in either situation.

It is clear from the record that the applicant and her spouse care very much for each other. They have not, however, shown why they could not live together in Brazil if the applicant's application for admission is denied. [REDACTED] has established that he owns his own business here in the United States, but he has not shown that he could not make a living in Brazil. The AAO recognizes the length of time that [REDACTED] has lived in the United States, but notes that he came here, from Brazil, as an adult. While returning to live in Brazil might not be easy, he has not shown that the difficulties he faces amount to extreme hardship. Although counsel refers to social and economic problems in Brazil that would make it difficult for the couple to earn a living there, the record does not contain evidence on country conditions for Brazil or how these conditions would affect the applicant and her husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Even if the applicant has submitted documents to show that she and her husband would have difficulty finding work in Brazil, this would be insufficient to show that their relocation to Brazil would result in extreme hardship to her husband.

Other than statements from the applicant and her husband, in which they note their love for and emotional attachment to each other, (See Affidavits [REDACTED] and [REDACTED] and letters from friends and family, no objective evidence was submitted to supplement [REDACTED] claim of extreme emotional hardship. Although it is clear that her husband would suffer emotionally, if she returned to the Brazil and he remained here, or if he lost regular contact with his daughter and grandson, they face the same decision that confronts others in their situation – the decision whether to remain in the United States or relocate to avoid separation – and this does not amount to extreme hardship under the law as it exists today. Based on the existing record, the effect of separation on [REDACTED], while difficult, would not rise above what individuals separated as a result of inadmissibility typically experience and does meet the legal standard established by Congress and subsequent case law interpreting the meaning 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 [REDACTED] faces extreme hardship if [REDACTED] is refused admission and he chooses to remain in the United States. 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) (upholding the BIA's decision in a case which addressed, *inter alia*, claims of emotional and financial hardship that [REDACTED] deportation would cause to his spouse and children). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS* held further, "while the claim of

emotional hardship was ‘relevant and sympathetic . . . it is not conclusive of extreme hardship, and is not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.’” *Hassan v. INS, supra*, at 468.

In this case, although the applicant’s qualifying relative will endure emotional hardship if he remains in the United States separated from the applicant, or if he joins her in Brazil and is separated from his family and friends in the United States, their situation, based on the limited documentation in the record, does not rise to the level of extreme hardship. The record does not contain sufficient evidence to show that the hardship he faces rises beyond the common results of inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(h). 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)(v) 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.