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U.S. Citizenship
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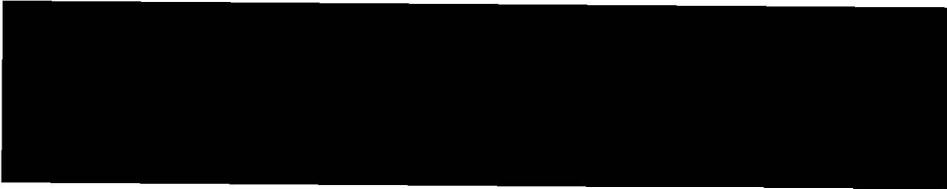
MAY 16 2007

FILE: _____ Office: SAN FRANCISCO, CALIFORNIA Date:

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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:



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, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 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 record reflects that the applicant is the spouse of a 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(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 United States citizen spouse and United States citizen son.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated May 18, 2004.

On appeal, the applicant, through counsel, asserts that she “can present evidence of an extreme hardship to her U.S. citizen husband. The husband suffers from serious medical problems including bipolar disorder that is being treated and he is receiving medication.” *Form I-290B*, filed June 14, 2004.

The record includes, but is not limited to, counsel’s brief, affidavits from the applicant, affidavits from the applicant’s husband, letters from [REDACTED] regarding the applicant’s husband’s mental health, dated June 7, 2004 and September 7, 2006, and letters from the applicant’s family. 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:

(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.

In the present application, the record indicates that the applicant entered the United States at Port Canaveral, Florida, on a B2 nonimmigrant visa on June 2, 2001, with authorization to remain in the United States until January 1, 2002. On November 18, 2001, the applicant married [REDACTED] a United States citizen. On April 2, 2002, the applicant and her husband had a son. On April 1, 2003, the applicant filed a Form I-130, an Application to Register Permanent Resident or Adjust Status (Form I-485), and an application for advance parole. The application for advance parole was approved and the applicant departed the United States. The applicant was paroled into the United States on May 27, 2003, with authorization to remain in the United States until August 16, 2003. On January 13, 2004, the applicant's Form I-130 was approved. On April 23, 2004, the applicant filed a Form I-601. On May 18, 2004, the District Director denied the Form I-601, finding the applicant accrued more than 365 days of unlawful presence and failed to establish extreme hardship would be imposed on the applicant's spouse. The District Director stated the applicant accrued unlawful presence from January 1, 2002 until April 1, 2003. The applicant is attempting to seek admission into the United States within 10 years of her 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 being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(I) of the Act is 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 applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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.

Counsel asserts that the applicant's spouse would face extreme hardship if he relocated to Brazil in order to remain with the applicant. "Since August of 2002, [the applicant's husband] has suffered from a chronic, severe mental illness called Schizo-affective Disorder. It is characterized by both psychosis and severe mood swings." *Letter from [REDACTED], The Permanent Medical Group, Inc.*, dated June 7, 2004. [REDACTED]

notes the applicant "and child are [the applicant's husband's] primary support system. Separating [the applicant's husband] from his wife and child would present a severe hardship for [her] patient likely resulting in decompensation, hospitalization and possible loss of his job." *Id.* [REDACTED] states "[d]espite his illness, [the applicant's husband] has been able to productively work as a medical assistant. Much of the reason that [the applicant's husband] is able to continue to work and support his family is the presence, support, and encouragement he receives from his wife." *Letter from [REDACTED], The Permanent Medical Group, Inc.*, dated September 7, 2006. "Given the instability of his condition he should also not be

made to move out of the country severing his current medical and psychiatric contacts.” *Letter from* [REDACTED] dated June 7, 2004, *supra*. The applicant’s husband states the applicant “made sure [he] took [his] medications and kept [his] appointments.” *Declaration of* [REDACTED] dated July 9, 2004. The applicant’s husband’s medications include “abily, seroquel, elavel, clonapin, and atarax. [He] takes them daily, some of them twice a day, to control [his] condition.” *Declaration of* [REDACTED] dated September 19, 2006. The AAO finds that evidence in the record establishes that the applicant’s husband suffers from Schizo-affective Disorder. In April 2004, the applicant’s husband was hospitalized “because [he] was threatening to commit suicide.” *Id.* The applicant’s husband states his suicidal episode occurred around the same time that the applicant was notified that she had to file a waiver application. *Id.* “Part of [his] distress was caused by [the applicant’s] immigration problem.” *Id.* The applicant’s husband states “[t]he support and love of [the applicant] and son help [him] to be able to live life and to work at a full time job. [He] could not do it without them.” *Id.* The applicant’s husband states he “could not move to Brazil because of [his] condition and [he does] not speak the language.” *Id.* The AAO finds that it would be an extreme hardship for the applicant’s husband to join the applicant in Brazil.

The AAO finds that the applicant meets the requirements for a waiver of her grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, in that the applicant’s spouse would suffer emotional hardship as a result of his separation from the applicant. The record establishes that the applicant’s spouse’s mental problems would be exacerbated whether the applicant is removed from the United States without him or whether he joins her in Brazil. The hardship in this case is beyond that which is normally experienced in cases of removal. The record establishes that the applicant is the primary caretaker for her husband, who suffers from a serious psychological condition. The applicant’s husband is incapable of maintaining his well being in the absence of the applicant. Accordingly, the AAO finds that the applicant has established that her United States citizen husband would suffer extreme hardship if her waiver of inadmissibility application were denied.

The favorable factors are the extreme hardship to her United States citizen husband, who depends on her for emotional support, the applicant’s contributions in raising her United States citizen child, and having no criminal record in the United States. The unfavorable factors in this matter is the applicant’s periods of unauthorized presence.

While the AAO does not condone her actions, the AAO finds that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary’s discretion is warranted in this matter.

In discretionary matters, the applicant bears the full burden of proving her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.