



U.S. Citizenship
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[Redacted]

FILE:

[Redacted]

Office: BALTIMORE, MARYLAND

Date: FEB 07 2008

IN RE:

Applicant:

[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:

[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 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, [REDACTED] 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. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the district director denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the District Director, dated March 11, 2005.* The applicant submitted a timely appeal.

The Form I-290B, Notice of Appeal, reflects that counsel requested 90 days in which to submit a brief and/or additional evidence. In response to the AAO's facsimile request for the brief and/or additional evidence, counsel stated that he did not file a brief and/or additional evidence as indicated on Form I-290B. Thus, the record as constituted is complete.

The AAO will first address the finding of inadmissibility.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

¹ Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

² *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

The record reflects that the applicant was granted a nonimmigrant visa on March 27, 2000, which she used to enter the United States on April 24, 2000, and departed from the United States in January 2002, which was beyond her period of authorized stay. The applicant reentered the United States on April 18, 2003, and filed the adjustment of status application on February 9, 2004. The record shows that the applicant accrued more than one year of unlawful presence when she voluntarily departed from the United States, triggering the ten-year-bar. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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

- (v) Waiver. – The Attorney General [now Secretary, 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 waiver of inadmissibility under section 212(a)(9)(B)(v) 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 a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s naturalized citizen husband. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The record contains a psychological evaluation, articles about Brazil, letters, a marriage certificate, divorce certificates, money transfer receipts, birth certificates, employment verification letters, income tax records, and other documents. It is noted that the record contains documents that have not been translated from Spanish into the English language. Because the applicant failed to submit certified translations of these documents, the AAO cannot determine whether they support the extreme hardship claim. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, these documents are not probative and will not be accorded any weight in this proceeding.

On appeal, counsel states that the psychological evaluation by [REDACTED] a licensed psychologist, shows that [REDACTED], the applicant’s husband, would experience extreme and unusual hardship if the waiver application were denied. He states that the evaluation conveys that [REDACTED] is at the beginning of a dementia process and that his wife could help him as he ages. Counsel states that [REDACTED] has lived in the United States since 1967 and that all of his immediate family members are U.S. citizens. He states that [REDACTED] neither speaks nor writes in Portuguese and has no future in Brazil. Counsel states that Mr. [REDACTED] and his wife support her family who live in Brazil, especially the grandson who has been diagnosed with cancer. Counsel states that the [REDACTED] would not have sufficient income in Brazil, where there is high

unemployment and criminal activity. Counsel cites to *Santana-Figueroa vs. INS*, 644 F.2d 1354, 1357 (9th Cir. 1981), to demonstrate that when an alien embraces life in the United States, the emotional and psychological impact of readjustment must be considered in assessing hardship; and to *Mejilla Carrillo vs. INS*, 656 F.2d 520, 522 (9th Cir.) and *Tukhowinich vs. INS*, 64 F.3d 460, 463 (9th Cir.), to show that Brazil's criminal, political, and economic factors must be considered in assessing hardship. To establish a basis for the waiver application's approval, counsel also cites to *Younghee Na Huck v. Att'y Gen.*, 676 F. Supp. 10 (D.D.C. 1987), *Matter of Gupta*, 13 I&N Dec. 477 (Deputy Assoc. Comm. 1970), *Matter of Ibarra*, 13 I&N Dec. 273 (BIA 1968); *Matter of De Perio*, 13 I&N Dec. 273 (BIA 1969), *Matter of Bass*, 11 I&N Dec. 512 (BIA 1966), and *Matter of Duchneskie*, 11 I&N Dec. 583 (BIA 1966), *Matter of Arabian*, 11 I&N Dec. 496 (BIA 1966), *Matter of Davoudllarian*, 11 I&N Dec. 300 (BIA 1965), *Slyper v. Att'y Gen.*, 576 F. Supp. 559 (D.D.C. 1983), *Matter of Savetamal*, 13 I&N Dec. 249 (BIA 1969), *Matter of Bridges*, 11 I&N Dec. 506 (1965), and *Matter of Habib*, 11 I&N Dec. 464 (1965).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The BIA in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's husband must be established in the event that he joins the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that [REDACTED] would endure extreme hardship if he remains in the United States without his wife.

In the psychological evaluation [REDACTED] indicates that [REDACTED] is 65 years old and has adult children who are 27, 35, and 40 years old. [REDACTED] states that [REDACTED] "thought processes were logical" and that he had "some difficulties with long[-]term memory and his time sequencing was poor at times." Mr.

states that indicates that he has no psychiatric problems and has never felt depressed. Mr. reports that worked approximately 95-100 hours per week at the same two jobs for 30 years. conveys that one of s jobs requires him to grease machinery at a stone quarry, and the other involves taking care of a household, including maintenance and errands. states that as grows older and is less capable of working extensive hours, an adjustment in lifestyle will be needed and marriage may assist in this. states that the results of s neuropsychological testing indicate areas that could affect his ability to adapt to a new set of circumstances and he states that Mr. "neuropsychological results are consistent with impaired functioning in the frontal lobe and the right temporal-parietal area of the brain," and that possibly "his functional impairments are the result of aging" and "if this is the case, they are likely to deteriorate over time." He states that as ages he may need someone to help with areas of planning and problem solving, particularly in changing circumstances. states that may have difficulty adapting to new challenges and his wife would be valuable in helping him adapt to new life circumstances and that this is "particularly true if Mr. is at the beginning of a dementia process."

The AAO finds that s assertions about s mental status are not sufficient to establish extreme hardship to in the event that he remains in the United States without his wife. The evidence in the record conveys that functions well, working over 90 hours each week managing the residence of s and working as a greaser at a stone quarry; any effects of dementia as indicated by are speculative. Furthermore, the applicant does not indicate why s adult children would be unable to care for their father.

The present record is sufficient to establish that would experience extreme hardship if he joined the applicant in Brazil.

The record conveys that the applicant's husband is 72 years old, does not speak Portuguese, and has worked and continues to work for the same two employers for 30 years. Given s age, family ties to the United States, and his unfamiliarity with Brazilian language and culture, the AAO finds that he would experience extreme hardship if he were to join the applicant to live in Brazil.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

The record fails to establish a finding of significant hardships over and above the normal economic and social disruptions involved in removal so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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 remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.