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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED] Office: MIAMI, FL

Date: APR 28 2009

IN RE: [REDACTED]

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:

[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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Brazil and a citizen of both Brazil and Spain 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 district director found that the record failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly. *Decision of the District Director*, dated September 19, 2006.

On appeal, counsel states that provisions limiting eligibility for relief from deportation must be construed narrowly, in favor of the alien, that Congress did not intend to break up families and the intent of Congress was ignored in the instant petition, and that U.S. Citizenship and Immigration Services (USCIS) erred in failing to grant the waiver and failed to apply discretion correctly. *Form I-290B*, dated October 17, 2006.

In the present application, the record indicates that the applicant entered the United States on a B2 visitor's visa on January 18, 1996 with an authorization to stay until July 17, 1996. The applicant was granted voluntary departure by an immigration judge in Miami, Florida, with an order to depart the United States on or before March 5, 1999. The applicant departed the United States in December 2002 and reentered through the visa waiver program on April 25, 2004. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted, until December 2002, when she departed the United States. On August 11, 2005 the applicant filed an application for adjustment of status. In applying for adjustment of status, the applicant is seeking admission within 10 years of her December 2002 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 and/or parent of the applicant. Hardship the applicant experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawful permanent resident spouse and/or parent.

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 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.

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).

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Spain or Brazil and in the event that he remains 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.

Counsel states that the applicant's husband will suffer extreme hardship if the applicant is removed from the United States in that he will suffer severe health, psychological, and emotional problems. *Counsel's Brief*, undated. Counsel also states that the applicant's spouse will suffer a wide array of difficulties detailed below if forced to leave the United States to live in the spouse's country of repatriation. *Id.*

The applicant's spouse states that he and the applicant met in 2004 and that the applicant is the only person he trusts. *Spouse's Statement*, dated June 14, 2006. The applicant's spouse states that the applicant gives him true love and moral support. He states that without the applicant in the United States he would be unable to pay his mortgage or living expenses and he would be forced to look for another job to cover his expenses in a difficult job market. The applicant's spouse states that the thoughts of being separated from the applicant for ten years has made him become very nervous and he has been having frequent anxiety attacks for the last thirty days. He states that because of this emotional distress he has seen a doctor and a psychologist. He states that he is currently on Xanax 0.25 mg once a day and Zoloft 50mg as prescribed by his doctor. The applicant's spouse states that he does not plan to move to Spain or Brazil because he has never traveled outside the United States, he is afraid to travel outside the United States, and he does not speak Spanish or Portuguese. *Id.* In addition, counsel states that the applicant's spouse has no family in Brazil, he has lived in the United States since birth and if he relocated it would only make his situation worse. *Counsel's Brief*, undated.

In support of these assertions the applicant's spouse submits a letter from his doctor and a psychological evaluation. The applicant's doctor, [REDACTED], states that the applicant's spouse has had problems with anxiety and panic attacks after the news of his spouse's possible deportation. *Doctor's Letter*, dated June 2, 2006. [REDACTED] states that the applicant is taking Xanax and Zoloft for his anxiety and panic attacks. *Id.*

In a psychological evaluation submitted by [REDACTED], L.M.H.C., Ms. [REDACTED] finds that in her professional opinion the applicant and her spouse are a bonded family unit, that if the applicant is removed from the United States the couple would be forced to separate because the applicant's spouse would not be able to make a living in Brazil and this separation would cause extreme emotional and psychological hardship. *Psychological Evaluation*, dated June 13, 2006.

The AAO recognizes that the applicant's spouse will experience hardship as a result of the applicant's inadmissibility, but the record does not demonstrate that the applicant's spouse would suffer extreme hardship as a result of relocating to either Brazil or Spain. The record does not contain any documentation to show that the applicant's spouse would not be able to find employment in Spain or Brazil or that the country conditions in these countries are such that it would be an extreme hardship to relocate. 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)).

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.

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.