

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H3

FILE:



Office: LIMA

Date:

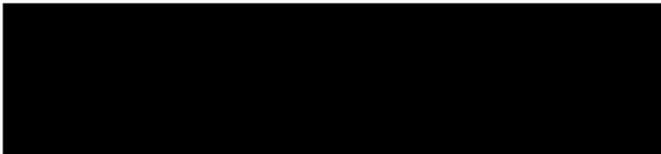
JUL 07 2009

IN RE:



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.

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 or reopen, 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 Officer-in-Charge, Lima, Peru. The matter 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. She 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 admission within 10 years of her last departure from the United States. 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 return to the United States to join her United States citizen husband, [REDACTED].

The District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (now referred to as Inadmissibility) accordingly.

On appeal, counsel asserts that the applicant's spouse suffers from back pain and depression. Counsel indicates that the applicant's spouse would be unable to find employment in Brazil. Counsel contends that the applicant has family ties in the United States. Counsel indicates that country condition reports document crime, violence and a high level of poverty in Brazil. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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 [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 reflects that on October 26, 2002 the applicant was admitted to the United States as a fiancée of a U.S. citizen (K-1 visa) until January 25, 2003. The applicant was admitted as a K-1 fiancée to conclude a valid marriage with her U.S. citizen petitioner within 90 days after admission. See Section 101(a)(15)(K) of the Act, 8 U.S.C. § 1101(a)(15)(K). The applicant failed to marry the U.S. citizen petitioner and remained in the United States until her departure to Brazil on April 20, 2006. Consequently, the applicant accrued unlawful presence for a period of over three years prior to her departure from the United States. The applicant is seeking admission within ten years of her April 20, 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(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)(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 upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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 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 (BIA) 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 United States 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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as 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 reflects that the applicant wed [REDACTED] a U.S. citizen, on May 9, 2005. The applicant's spouse is a qualifying family member for section 212(a)(9)(B)(v) of the Act extreme hardship purposes.

The AAO will address each of the hardship factors put forth by counsel. First, counsel asserts that the applicant's spouse has back problems and suffers from chronic pain, which he manages through chiropractic treatments. Counsel states that the applicant's spouse has difficulty performing everyday activities such as housecleaning, yard work, and home maintenance. Counsel indicates that the applicant took care of the household responsibilities for her spouse. Counsel notes that the applicant's spouse has now been forced to hire someone to help with the household chores. Counsel further contends that the applicant and her spouse struggle with depression. The record contains a declaration from the applicant's spouse, dated May 18, 2007, in which he claims that he began having back pain around seven years ago. He explains that X-rays show he has swelling on a disc and nerves at the base of his spine because one bone is not aligned. He indicates that he receives medical treatment from his chiropractor, [REDACTED]. He contends that he does not know whether he could afford medical treatment in Brazil or whether there are chiropractors in the country. He notes that when the applicant was in the United States, she took care of the housecleaning, yard work, and home repairs. He indicates that he is feeling depressed because of his separation from the applicant.

As corroborating evidence, counsel furnished a letter from [REDACTED] dated May 7, 2007. [REDACTED] states in his letter that an X-ray revealed misalignment of the applicant's spouse's lumbar spine, which would explain the applicant's back problems. He states that the applicant's spouse is expected to have back pain for the rest of his life. He indicates that it would be helpful for the applicant to help her spouse with household chores. Counsel also furnished a letter from Steven [REDACTED], dated May 8, 2007. [REDACTED] states that the applicant's spouse has chronic pain syndrome of the lumbar spine. He states that the applicant's spouse had a work related injury to his lumbar spine that has become chronic in nature. He indicates that the applicant continues to receive regular chiropractic care to address his pain to allow him to continue to work and function. Dr. [REDACTED] treatment plan includes periodic chiropractic care, including specific chiropractic adjustments, deep transverse friction massage, and manual traction.

The AAO finds that the medical hardship demonstrated by the record does not rise to the level of extreme hardship. The AAO notes first that there is no documentary evidence in the record related to the claims that the applicant and her spouse are suffering from depression. 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)). Second, the AAO recognizes that the applicant's spouse has chronic back pain. However, he has failed to demonstrate how refusal of the applicant's admission to the United States would contribute to his medical hardship. The applicant's spouse indicates that when the applicant was in the United States she took care of their housecleaning, yard work, and home repairs. The record contains a letter from his brother, dated May 26, 2007, which asserts that the applicant's spouse has had to pay someone to work at his house because the applicant is not in the United States. The letter states that it is hard because the applicant's spouse cannot pay for help at his house forever. However, there is no documentation in

the record of the type of household assistance the applicant's spouse has hired, and the cost of this assistance in comparison to his earnings. Further, the applicant's spouse claims that he has had back pain since 2000 – three years prior to meeting the applicant. He has not discussed how he managed his household duties during that time period. Nor has he discussed how he continues to maintain his employment as a janitor despite his chronic back pain. Finally, the applicant's spouse indicates that he does not know whether he could afford medical treatment in Brazil or whether there are chiropractors in the country. Without such information, the AAO cannot conclude that the applicant's spouse would not have access to health care in Brazil to treat his chronic back pain. For these reasons, the AAO cannot conclude how the applicant's spouse's medical condition would contribute to a finding of extreme hardship.

Counsel asserts that the applicant's spouse has never lived in Brazil and has no family or friends there apart from the applicant. Counsel indicates that the applicant's spouse is close to his lawful permanent resident brother and his brother's family. Counsel notes that the applicant has resided in the United States since he was 24 years old, and is integrated into U.S. society. The applicant asserts in his declaration that his separation from the applicant has been emotional for him. He states that it is sad and depressing to come home to an empty house. He indicates that he misses doing things with the applicant. He states that if the applicant is not permitted to return to the U.S. for ten years, it will be too late for her to have children. He notes that he lost his first wife, who died of Lupus and pulmonary fibrosis in March 1999. He indicates that he cannot find his happiness because he lost his first wife and now he has lost the applicant. Counsel furnished numerous photographs of the applicant and her spouse with their friends and family.

The AAO recognizes that the applicant's spouse is suffering emotionally due to his separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Counsel asserts that the applicant's spouse has no job prospects in Brazil. Counsel indicates the applicant's spouse has a high school diploma and there are few good jobs in Brazil. She states that the applicant would lose his house and medical insurance. Counsel notes that if the applicant were

allowed to return to the United States, she would be able to work and contribute to the family budget, which would reduce her spouse's financial strain. Counsel indicates that country condition reports document the high level of crime, violence and poverty in Brazil. The applicant indicates in his declaration that when the applicant resided in the United States, he worked 60-70 hours a week to pay the bills and mortgage, while the applicant worked part-time as a housecleaner and cared for their home. The applicant states that the crime and poverty rate is high in Brazil. He indicates that the applicant cannot find a job in Brazil. He states that the applicant's family is poor and they live in a rundown house.

The AAO will consider financial hardship as a factor contributing to extreme hardship. However, in the present case, sufficient documentation has not been provided to demonstrate the applicant's spouse's financial situation. The applicant's spouse has furnished a copy of his monthly home loan statement, showing his monthly mortgage payment of approximately \$407. However, he has not demonstrated how this expense compares to his monthly earnings with evidence of the applicant's spouse's annual income and expenses or his assets and liabilities. Further, there is no documentation in the record related to the applicant's earnings when she was employed in the United States as a part-time housekeeper. Such information would allow the AAO to gauge the financial impact of the loss of those earnings. In regard to employment opportunities in Brazil for the applicant's spouse, the AAO notes that the applicant's spouse would not have any linguistic hurdles as he speaks Portuguese. Further, the applicant's spouse has described the high rate of poverty in Brazil, but has not discussed the type of employment opportunities available to him in the country. For these reasons, the AAO finds that the financial hardship demonstrated by the record does not rise to the level of extreme hardship.

Finally, in regard to the high level of violent crime in Brazil, counsel cited to the U.S. Department of State's 2006 human rights report for Brazil, stating that the report documents the daily crime and violence from gangs, drug cartels, and the military and civilian police in Brazil. The AAO notes that applicant's declaration indicates that he has visited Brazil on two occasions. However, there is no discussion in the record of whether he was a victim of crime or violence during these two visits. Nor is there any indication of how the high rate of crime affected his daily life activities. Since counsel has failed link the general findings in the country condition reports to the applicant's specific situation, the AAO cannot conclude that they are of significant probative value in these proceedings.

Therefore, the record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is refused admission 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)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.