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FILE:  Office: LIMA, PERU Date: **MAR 15 2007**

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i), 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.

*Robert P. Wiemann*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Lima, Peru, 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 under two sections of the Immigration and Nationality Act (the Act): section 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation; and section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States and reside with her U.S. citizen husband, [REDACTED]

The Officer-in-Charge (OIC) concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Excludability (Form I-601), accordingly. *Decision of the OIC*, dated July 6, 2005.

In this decision the AAO will address whether the applicant has established eligibility for the hardship waiver pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act.

On appeal, counsel asserts that the resulting hardship in the present case “goes well beyond what would normally be expected upon deportation.” (citing *Perez v. INS*, 96 F. 3d 390, 392 (9<sup>th</sup> Cir. 1996)). Counsel states that [REDACTED] has endured severe emotional and physical effects since his wife’s deportation: he has lost weight, is depressed, and might eventually contemplate suicide. Counsel states that [REDACTED]’s parents will soon move and consequently will not be available to offer emotional support. Counsel asserts that the term “extreme hardship” is broadly defined under section 5 of P.L. 85-316; and that denying the instant case, by finding that severe emotional and physical distress does not constitute an “extreme hardship,” is subjective. Counsel states that [REDACTED] is undergoing therapy, and has been diagnosed with 296.32 Major Depressive Disorder, Recurrent, Moderate. According to counsel, [REDACTED] did not know the ramifications of deportation and had married the applicant in Brazil after her return there. Counsel indicates that the applicant and her husband have had an ongoing relationship since August 2001. Counsel distinguishes *Matter of W*, 9 I&N Dec 1 (BIA 1960), a case referenced in the denial decision, from the present case, by stating that the appellant in *Matter of W* had a criminal record, and had a spouse who was not financially dependent on him. Counsel states that the applicant here does not have a criminal record and is financially dependent on her husband. *Counsel’s Appeal*.

In a notarized letter, [REDACTED] states the following. If he remains in the United States he would rarely see his wife, and this is not the situation in which he would like to start a family. He would like his children to be U.S. citizens and he would like to be involved in their day-to-day care. If he foregoes having children, such a sacrifice is beyond normal expectations. He misses his wife’s companionship and intimacy. Due to his mother’s health she cannot travel overseas. His mother will miss seeing her daughter-in-law and any children they might have. He is concerned that the stress of his situation will affect his mother’s health. He is worried that if he leaves the country he will lose his job and will not be able to find a job in a similar field in Brazil. His wife lives in a small rural town and they would have to move to a large city in Brazil to find work, which would be difficult because he does not speak the language of Brazil and is not a citizen. *Notarized letter, dated July 25, 2005, from Applicant’s Husband*, [REDACTED]

The AAO notes that the content of the letter from the applicant's father-in-law is similar to that of the letter from her husband. Her father-in-law indicates that the applicant's mother would not be able to financially support the applicant and his son in Brazil. He is concerned about his son's choices: living in poverty in Brazil or living in the United States and apart from his wife. *Notarized letter, dated July 25, 2005, from Applicant's Father-in-Law.*

The content of the letter from the applicant's mother-in-law is similar to that of the letter from the applicant's husband and father-in-law. *Notarized letter, dated July 25, 2005, from Applicant's Mother-in-Law.*

The notarized letters in the record from family members and friends of [REDACTED] express concern about his well-being. *Letter from [REDACTED]; Letter from [REDACTED]; Letter from [REDACTED]; Letter from [REDACTED].*

The record contains a clinical assessment of [REDACTED] by [REDACTED]. In the assessment, Mr. [REDACTED] indicates that [REDACTED] is acutely depressed, and he lists [REDACTED] symptoms, which include appetite and sleep disturbance, loss of energy and loss of interest in activities that used to be pleasurable, anxiety about his wife's well-being and uncertainty about seeing her again; and loss of concentration. Mr. [REDACTED] diagnosed the applicant's husband with 296.32 Major Depressive Disorder, Recurrent, Moderate. *Clinical Assessment, dated July 27, 2005.*

In addition to the notarized letters and clinical assessment, the record contains the Form I-601; copies of telephone bills; [REDACTED] flight itinerary; photographs; the Form I-130 and supporting documents; and other evidence.

The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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.

The record reflects that the applicant entered the United States on February 2001 with a B-2 visa. She obtained unauthorized employment within 30 days of her arrival in the United States, in violation of the Department of States' 30-60 rule, rendering her inadmissible under section 212(a)(6)(C)(i) of the Act for procuring a visitor's visa with the intent of living and working in the United States. The applicant returned to Brazil in December 2002. *Decision of the OIC*, dated July 6, 2005. She therefore remained unlawfully in the country for over one year. As she is seeking admission within 10 years of her last departure, the OIC found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The applicant seeks a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act. A waiver of inadmissibility under these sections is dependent upon a showing that the bar to admission imposes an extreme hardship to 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 relevant only to the extent that it results in hardship to a qualifying relative in the application, which in this case is . Once extreme hardship to the qualifying relative is established, the Secretary considers whether the applicant merits a waiver as a matter of discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

"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, 564 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) lists the factors that 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. *Matter of Cervantes-Gonzalez* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999).

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation from one’s spouse will therefore be given appropriate weight in evaluating the hardship factors in the present case.

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are relevant in determining extreme hardship to the applicant's spouse, [REDACTED]. It is noted that extreme hardship to Mr. [REDACTED] 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.

[REDACTED] asserts that he will suffer extreme emotional hardship if the applicant’s waiver of inadmissibility is not granted. In support of this assertion the record contains a clinical assessment of [REDACTED] a notarized letter from him, and notarized letters from his family and friends. Although the submitted clinical assessment is relevant, and the input of any mental health professional is respected and valuable, the AAO notes that the assessment is based on a single interview between the applicant’s spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s spouse or any history of treatment for the generalized anxiety disorder suffered by [REDACTED]. Moreover, the conclusions reached in the submitted evaluation, which are based on a single interview, do not reflect the insight and elaboration based on an established relationship with a clinical social worker, thereby rendering the [REDACTED] findings speculative and diminishing the assessment’s value in determining whether extreme hardship exists.

In a notarized letter, [REDACTED] states that if he remains in the United States he would rarely see his wife, and this is not the situation in which he would like to start a family. Counsel asserts that the resulting hardship in the present case “goes well beyond what would normally be expected upon deportation.” The AAO is mindful and understanding of the difficult position in which [REDACTED] is placed if he separates from his wife; however, separation of family members is a common result of deportation. See *Perez* at 392. In *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Court of Appeals upheld the BIA’s finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). Based on the evidence of record, the AAO finds that [REDACTED]’s separation from his wife does not rise to the level of extreme hardship.

█ asserts that he will endure extreme hardship in Brazil as he will not be able to find employment there, and as a consequence, will live in poverty. It is well settled that economic detriment is a factor for consideration; however, by itself it is not enough to justify a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding the BIA determination that the mere showing of economic detriment to qualifying family members is insufficient to establish extreme hardship.); *Davidson v. INS*, 558 F.2d 1361, 1363 (9th Cir.1977) (lower standard of living in Mexico was not sufficient to establish extreme hardship; economic disadvantage alone does not constitute extreme hardship.); and *Bueno-Carrillo v. Landon*, 682 F.2d 143, 146 (7th Cir. 1982); (economic detriment is a factor for consideration, but it alone does not constitute extreme hardship; need to have other factors such as advanced age, illness, family ties, etc. combine with economic detriment to establish extreme hardship.) Furthermore, the AAO notes that the applicant submitted no documentary evidence that would show that her husband would experience extreme economic hardship if he were to live in Brazil with her.

The AAO finds that the individual factors in the present case do not establish extreme hardship in themselves, and when considered in totality, the combination of hardships is insufficient to take the hardships beyond those which are ordinarily associated with deportation.

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)(6)(C) 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.