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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LIMA, PERU Date: MAR 15 2007

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:

[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 Officer-in-Charge (OIC) in Lima, Peru, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

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. [redacted] is the wife of [redacted], a U.S. citizen, and the mother of a U.S. citizen child (born June 9, 2004). She 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 husband and child.

The OIC in Lima, Peru, stated that on April 26, 2004 the United States American Consulate General in Rio de Janeiro, Brazil, found [redacted] inadmissible under section 212(a)(9)(i)(II) of the Act. The OIC denied the Application for Waiver (Form I-601), finding that [redacted] failed to establish that extreme hardship would be imposed on her qualifying relative, [redacted], if she were denied a waiver of inadmissibility. *Decision of the American Embassy in Lima, Peru*, April 5, 2005.

On appeal, counsel distinguishes the facts in the case here from those in *Matter of Certantes-Gonzales,* 22 I&N Dec. 560 (BIA 1999). Counsel states that in *Matter of Certantes-Gonzales* the respondent was convicted for possession of a false birth certificate with the intent to defraud the United States government by having obtained a U.S. passport, and was excludable under section 212(a)(6)(C) of the Act. Here, [redacted] is considered excludable for her overstay in the United States, which counsel asserts does not rise "to the level of a conviction for immigration fraud." According to counsel, the respondent in *Certantes-Gonzales* was in deportation proceedings when he married, which counsel asserts is not the situation here. Counsel further states that the financial hardship of relocation was not an issue in *Matter of Certantes-Gonzales:* the respondent barely earned a living in the United States and his naturalized citizen wife was unemployed. Counsel states that the wife in *Matter of Certantes-Gonzales* had been born in Mexico, spoke Spanish, and could easily relocate to Mexico where she had substantial family ties. Counsel contends that [redacted] has no relatives in Brazil; does not speak Portuguese; and would earn only a fraction of the $77,000 that he earned in 2004. Counsel also states that because [redacted]'s wife was not in deportation proceedings when they married, he never considered living in Brazil. According to counsel, [redacted] found a job after his return from Brazil. Counsel states that [redacted]'s mother died shortly after [redacted]'s arrival in Brazil in November 2003.

The documents in the record include: an affidavit by [redacted]; letters from the employers, family, and friends of [redacted]; a letter from [redacted]; birth certificates; a document entitled "Certidao de Obito" in the Spanish language; documents relating to travel; documents from the United States Consulate General; the Form I-601; information about healthcare benefits; and other documentation. The entire record has been reviewed 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 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.

. . .

The record reflects that [redacted] entered the United States in September 1994 with a B-2 visa and departed from the country in late 1999. She entered the United States without inspection in April 2001 and departed in November 2003. Thus, she remained unlawfully in the country for over one year. As she is seeking admission within 10 years of her last departure, the OIC correctly found [redacted] inadmissible under section 212(a)(9)(B)(i)(II) of the Act. [redacted] does not contest this finding.

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 or to her child is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. [redacted] U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; s*ee also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

The AAO finds unpersuasive counsel's assertion that *Matter of Cervantes-Gonzalez* should not be used in Ms. [redacted]s case because it involves deportation, conviction for immigration fraud, no economic hardship regarding relocation, and substantial ties to Mexico for the applicant's wife. *Matter of Cervantes* is used in cases involving waivers of inadmissibility as guidance for what constitutes extreme hardship and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In the case, the BIA, assessing a section 212(i) waiver of inadmissibility case, states:

> Although it is, for the most part, prudent to avoid cross application between different types of relief of particular principles or standards, we find the factors articulated in cases involving suspension of deportation and other waivers of inadmissibility to be helpful, given that both forms of relief require extreme hardship and the exercise of discretion . . . . [*S]ee . . . Hassan v. INS,* 927 F.2d 465, 467 (9th Cir. 1991) (noting that suspension cases interpreting extreme hardship are useful for interpreting extreme hardship in section 212(h) cases). These factors

> related to the level of extreme hardship which an alien's "qualifying relative," . . . would experience upon deportation of the respondent.

In, *In Re Monreal-Aguinaga,* 23 I&N Dec. 56 (BIA 2001), a section 240A(b) of the Act, 8 C.F.R. § 240.20, cancellation of removal case, the BIA states:

> We do find it appropriate and useful to look to the factors that we have considered in the past in assessing "extreme hardship" for purposes of adjudicating suspension of deportation applications, as set forth in our decision in *Matter of Anderson,* 16 I&N Dec. 596 (BIA 1978). That is, many of the factors that should be considered in assessing "exceptional and extremely unusual hardship" are essentially the same as those that have been considered for many years in assessing "extreme hardship," but they must be weighted according to the highter standard required for cancellation of removal. However, insofar as some of the factors set forth in *Matter of Anderson* may relate only to the applicant for relief, they cannot be considered under the cancellation statute, where only hardship to qualifying relatives, and not to the applicant, may be considered. Factors relating to the applicant himself or herself can only be considered insofar as they may affect the hardship to a qualifying relative.

In, *In Re Kao-Lin,* 23 I & N Dec. 45, 54 (BIA 2001), a suspension of deportation case, the BIA referred to the factors listed in *Matter of Anderson, supra,* in making a determination of extreme hardship, stating in a footnote 3 that:

> The standard for "extreme hardship" that we apply in the present case is the same as that applied in cases dealing with petitions for immigrant status under section 204(a)(1) of the Act, 8 U.S.C. § 1154(a)(1) . . . as well as in cases involving waivers of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

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* at 565. As previously stated, the BIA in *Matter of Cervantes-Gonzalez* 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).

It has been held that "the family and relationship between family members is of paramount importance" and that "separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1423 (9th Cir. 1987) *citing Bastidas v. INS,* 609 F.2d 101 (3rd Cir. 1979). 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 here. It is noted that the analysis entails determining whether extreme hardship to the qualifying relative has been established in the event that the qualifying relative accompanies the applicant and in the event that he or she remains in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. Hardship to the applicant or to her child is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application.

In a letter dated April 30, 2004, [redacted] stated that his wife gave birth to their child in Brazil and that his medical insurance will not cover medical expenses incurred overseas. He stated that he has had financial hardships relating to his telephone and travel expenses to Brazil. [redacted] stated that the separation has caused him to have "severe emotional challenges and depressive symptoms as well as feelings of extreme anguish." It is noted that the record contains a document "PTEK Holdings, Inc.," reflecting that [redacted] was covered under her husband's healthcare benefits as of August 1, 2003. The record contains letters from friends attesting to the close relationship of [redacted] and his wife.

The affidavit in the record (dated April 29, 2005) from [redacted]., a psychologist, relates to an interview that [redacted] had with [redacted] In the affidavit, [redacted] stated that [redacted] "lost a lot of weight as a result of his depression about being separated from his wife and baby daughter." [redacted] stated that [redacted] sought counseling with his church pastor in December 2003, after visiting his pregnant wife in Brazil. He stated that [redacted] "experienced the profound loss of not being able to be with his wife, and to share the joy of the pregnancy, and the planning for their future with their child." [redacted] stated the Mr. [redacted] was in Brazil for the birth of his daughter on June 9, 2004, and when he returned to the United States, "he had to leave his home in Connecticut, because he could no longer afford the rent. He now lives with his parents." [redacted] states that [redacted] feels, and I agree with him, that it would not be wise for his daughter to be separated from her mother at this time in her life." According to [redacted], [redacted] states that he does not speak Portuguese, and is therefore unable to work in Brazil and support his family. [redacted] indicated that Mr. Faber was not presently working "because he has been unable to marshal the necessary concentration that his occupation demands." [redacted] stated [redacted] has seen very little of his daughter during the first eleven months of her life, and if his daughter "is unable to grow up with her father, she will begin to experience symtomatology of a separation anxiety disorder." [redacted] stated that [redacted] has a "depressive symptomatology which is of a "reactive situational nature" and that "neither antidepressant medication nor supportive psychotherapy can fully alleviate his depressive symptoms" because the symptoms

are caused by the separation from is family. According to [redacted] "cannot be reunited with his family in the United States, he may well develop suicidal ideation."

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted affidavit is based on a single interview between [redacted] and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and [redacted] or any history of treatment for the generalized anxiety order suffered by [redacted] Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. It is noted that [redacted]'s conclusion, that [redacted]'s daughter will experience symtomatology of a separation anxiety disorder if she is unable to grow up with her father, is a generalized statement. It is not supported by evidence about separation anxiety disorder or any evidence that pertains specifically to [redacted]'s daughter. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The record contains evidence pertaining to [redacted]'s prior employment. A letter (dated April 26, 2005) from [redacted], the Human Resources Administrator, stated that [redacted] was employed with Premiere Global Services from June 9, 2003 to November 5, 2004 as a senior account executive in the Sales Department, earning a base salary of $56,000 plus commissions. The letter (dated April 29, 2005) from [redacted], Regional Sales Manager, Northeast, indicates that he hired [redacted] in early June of 2003 and that [redacted] left his position on November 5, 2004 because of personal reasons related to his wife's immigration situation. [redacted] stated that "I believe that his job performance was impacted greatly due to the emotional distress that he was undergoing connected with being separated from his wife who is in Brazil." [redacted] indicated that [redacted] was "experiencing emotional duress" after he returned to the United States without his wife.

The evidence in the record does not establish extreme emotional hardship to [redacted] if he remains in the United States. The AAO notes that the psychologist that interviewed [redacted] indicated that [redacted] will not separate his daughter from her mother. However, the record does not contain a sworn and notarized affidavit by [redacted] stating that he will allow his daughter to live in Brazil with his wife if the waiver application were denied. The AAO recognizes that [redacted] will endure emotional hardship as a result of separation from his wife. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. 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 instance, in *Matter of Pilch*, 21 I. & N. Dec. 627, 632 (BIA 1996) the BIA noted that "the fact that an alien has a United States citizen child does not of itself justify suspension of deportation." (Citations omitted.) The BIA further stated that: "[a]n alien illegally in the United States does not gain a favored status by the birth of a child in this country. (Citations omitted), *Id.* at 632. It also 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. The AAO finds that the record is insufficient to show that the emotional hardship endured by [redacted] is unusual or beyond that which is normally to be expected upon deportation.

[redacted] has expressed that he will endure extreme economic hardship if his wife's waiver of inadmissibility is not granted. In *INS v. Jong Ha Wang,* 450 U.S. 139, 144 (1981), the U.S. Supreme court found that economic detriment alone is insufficient to establish extreme hardship. Thus, although the economic hardship endured by [redacted] is relevant in determining whether extreme economic hardship exists, such hardship alone is insufficient to constitute extreme hardship under section 212(a)(9)B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). If [redacted]'s child were to live in Brazil with her mother, no evidence indicates that his daughter would not have access to adequate health care in Brazil or suggests that [redacted] will be unable to financially support his family, even though he remains in the United States.

If [redacted] were to relocate to Brazil to be with his wife and daughter, counsel contends that [redacted] would not be able to find employment as he does not speak Portuguese. Counsel's assertion regarding Mr. [redacted]'s language skills does not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, [redacted] provided no evidence about Brazil's economic, social, and political condition; thus, the record lacks evidence to show that her husband would be unable to support his family should he move to Brazil. Again, the U.S. Supreme court found that economic detriment alone is insufficient to establish extreme hardship. *Jong Ha Wang* at 144. The AAO notes that, as a U.S. citizen, [redacted] is not required to reside outside of the United States as a result of denial of the applicant's waiver request.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors [redacted] has raised, both individually and in the aggregate, it is concluded that these elements 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).

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 he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

**ORDER:** The appeal is denied.