



U.S. Citizenship  
and Immigration  
Services

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H14

[REDACTED]

FILE:

[REDACTED]

Office: LIMA, PERU

Date: MAR 03 2008

(relates)

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.

Robert P. Wiemann, 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 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 and seeking readmission within ten years of her last departure from the United States and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in 1999. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant had failed to show extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated February 6, 2006.

On appeal, counsel submits additional evidence and states that the denial of the applicant's waiver application has resulted in devastating emotional damage to the applicant's spouse. *Counsel's Letter*, dated March 2, 2006.

The record indicates that the applicant attempted to enter the United States on a B-2 visitor's visa in October 1997, but was granted voluntary departure because she did not have a return ticket. She then entered the United States in February 1998 and remained until April 1999. On April 17, 1999, the applicant attempted to reenter the United States and was expeditiously removed. The record then indicates that she applied for and received a new passport and B-2 visitor's visa under a different name and date of birth. In June 1999 the applicant entered the United States with this new passport and visa. In November 2003, the applicant was ordered removed because of her previous immigration violations and departed the United States in January 2004. The AAO notes that the applicant procured admission into the United States by fraud when she obtained a visitor's visa using a different name and date of birth.

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.

The AAO finds that the applicant also accrued unlawful presence from when she entered the United States by fraud in June 1999 until January 2004, the date she departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of her January 2004 departure from the United States. Therefore, the applicant is also 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.

Section 212(i) and section 212(a)(9)(B)(v) waivers of the bars to admission resulting from section 212(a)(6)(C) and section 212(a)(9)(B)(i)(II) of the Act are 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 alien experiences due to separation is not considered in section 212(i) and section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse.

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 Brazil or in the event that he resides 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 denial of the applicant's waiver application will result in devastating emotional damage. *Counsel's Letter*, dated March 2, 2006. In support of this statement counsel submits evidence documenting the applicant's spouse's emotional suffering. The record indicates that the applicant's spouse is sixty-eight years old and has a history of anxiety problems with eight months of psychological therapy stemming from the applicant's immigration problems. The record includes a medical report from [REDACTED] of Concord Hillside Medical Associates, which states that the applicant's spouse had been anxious for ten days concerning his wife's recent detention by the immigration authorities. *Medical Report*, dated October 29, 2003. The report states that the applicant's spouse was having problems sleeping through the night and concentrating at work. [REDACTED] diagnosed the applicant's spouse with situational anxiety, prescribed him medication and discussed other methods of controlling his symptoms. *Id.* The record also includes two psychological evaluations from [REDACTED], a licensed social worker. [REDACTED] states that he began seeing the applicant's spouse on July 14, 2005 and has been seeing him on a regular basis, which includes an appointment every other week. *Psychological Evaluations*, dated September 1, 2005 and March 1, 2006. Mr. [REDACTED] states that in response to the applicant's initial detention and removal from the United States, her spouse became acutely depressed and experienced the following symptoms: sleep disturbance, appetite disturbance, mood disturbance with frequent crying, anxiety, loss of energy, difficulty concentrating, racing thoughts, and somatic complaints. [REDACTED] states that these symptoms lasted approximately two weeks, requiring psycho-pharmacological intervention. *Psychological Evaluation*, dated September 1, 2005. Mr. [REDACTED] reports that during the applicant's spouse's adjustment period, from January 2004, when the applicant was removed from the United States until September 1, 2005, the applicant's spouse has been experiencing recurrent depressive symptoms, which also include feelings of hopelessness and loss of interest in pleasurable activities. [REDACTED] concludes that the applicant's spouse is suffering from major depressive disorder, recurrent, mild. *Id.*

On appeal, counsel submits an updated psychological evaluation from [REDACTED] which states that in addition to the applicant's spouse's biweekly sessions, the applicant's spouse required a crisis session on

February 23, 2006 in response to the denial of the applicant's waiver. *Psychological Evaluation*, dated March 1, 2006. [REDACTED] states that the applicant's spouse is experiencing an acute stress reaction to the denial of the applicant's waiver application and that his stress symptoms parallel those he experienced when the applicant was first detained in October 2003. *Id.*

Counsel also submits a statement from the applicant's spouse regarding the extreme emotional hardship he is suffering. The applicant's spouse states that he has experienced severe suffering, which has required medical consultations. *Spouse's Statement*, dated September 5, 2005. He states that his first experience living under extreme hardship was when the applicant was detained by Immigration and Customs Enforcement. He states that after two weeks of constant worry, nervousness and apprehensive unease he sought medical attention. The applicant's spouse recalls that he was unable to control his emotions. The applicant's spouse states that he was able to visit the applicant in Brazil in April 2004 and August 2005. He explains that he has been trying to overcome his symptoms of depression. He states that although feelings of hopelessness, despondency, and dejection come to him daily, he tries to maintain his strength and determination to support the applicant with her waiver application. He asserts that during the last few months he has experienced new signs of living under extreme hardship with an increased sense of apprehension and fear, marked by sweating, tension and an accelerated pulse. *Id.* The AAO finds that the medical report, psychological evaluations and the applicant's spouse's statement show that he has suffered extreme emotional hardship as a result of the applicant's inadmissibility to the United States.

The applicant's spouse also states that when considering relocation to Brazil, he feels that he would be trading one hardship for another. He states that relocation would result in the loss of his employment; would separate him from his family in the United States, which includes, a son, a daughter and two grandchildren; and would result in the loss of his equity in his current condominium apartment. The applicant's spouse also asserts that relocation to Brazil could expose him to age discrimination. *Spouse's Statement*, dated September 5, 2005. The record indicates that the applicant's spouse is 68 years old and has been a U.S. citizen since 1983. His G-325A Biographic Information form shows that he has been a Systems Engineer with CDI Business Solutions since April 1999. Counsel submits the 2003 State Department Human Rights Report for Brazil. The report states that in Sao Paulo and Porto Alegre there are police stations that specifically attend to the rights of the elderly. It states that in 2002, the Sao Paulo station counted 300 cases per month of discrimination against the elderly. The AAO notes that the record does not indicate that the applicant is currently residing in either of these cities. The 2003 report also states that the minimum wage in Brazil is not sufficient to provide a decent standard of living for a worker and family. *Id.* The AAO notes that the record does not establish that the applicant's spouse, a systems engineer, would be paid a minimum wage salary if he moved to Brazil. The AAO recognizes that given the applicant's spouse's age, length of residence in the United States and family ties to the United States, it could be difficult for him to relocate and find employment in Brazil. However, the record does not prove that upon relocation to Brazil, given his years of work experience, he could not find employment and benefits in Brazil commensurate with his current situation in the United States and/or that he would not be able to visit his family in the United States. The AAO also notes that the record fails to demonstrate that the applicant would be unable to find employment in Brazil and assist her spouse in supporting their household. Thus, the current record does not show that the hardship experienced upon relocation would rise to the level of extreme hardship.

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.