

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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

H4

[REDACTED]

FILE:

[REDACTED]

Office: MIAMI

Date:

MAR 19 2009

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 PETITIONER:

SELF-REPRESENTED

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, and 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 has resided in the United States since November 14, 2002, when she was admitted as a B-2 visitor for pleasure with permission to remain until May 12, 2003. The applicant remained in the United States until 2005 and then traveled to Brazil and returned to the United States with an advance parole document on September 22, 2005. She was found to be inadmissible to the United States under 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 for a period of one year or more. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. 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 remain in the United States with her husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated December 6, 2006.

On appeal, the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) did not correctly evaluate her waiver application and states that her husband would suffer extreme hardship whether he remained in the United States without the applicant or relocated to Brazil. *See Applicant's Statement in Support of the Appeal, Attachment to Form I-290B.* The applicant claims that her husband would suffer financial hardship due to the expense of traveling to Brazil to visit the applicant, and living separately would cause their marriage to suffer. *See Applicant's Statement in Support of the Appeal.* The applicant further claims that her husband would suffer extreme hardship if he relocated to Brazil because of the lower standard of living there, and states that if she left the United States they would lose the business that they own together. *See Applicant's Statement in Support of the Appeal.* In support of the waiver application and appeal, the applicant submitted copies of a business license and other documents related to the painting business she and her husband own, a letter from her husband, and documentation related to worker's compensation received by the applicant's husband in 2004. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-eight year-old native and citizen of Brazil who has resided in the United States since November 2002, when she entered as a visitor for pleasure with permission to remain until May 12, 2003. The applicant remained in the United States after that date, traveled to Brazil, and returned with an advance parole document on September 22, 2005. The applicant filed an Application for Adjustment of Status (Form I-485) on February 4, 2005. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from May 12, 2003 until February 4, 2005, when she filed her application for adjustment of status. The applicant’s husband is a forty-

eight year-old native of Cuba and citizen of the United States. The applicant and her husband reside in Homestead, Florida.

The applicant asserts that her husband would suffer extreme hardship if he relocated to Brazil with the applicant because the standard of living is lower there than in the United States. The applicant did not submit any evidence to support this assertion, such as information on economic conditions in Brazil or other evidence related to the ability of the applicant's husband to adjust to life in Brazil. 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)).

The applicant asserts that if she were removed and her husband remained in the United States, her husband would experience financial difficulties due to the expense of traveling to Brazil to visit her, and would also lose the business that they own together. In support of this assertion the applicant submitted a copy of a business license and other documents related to the incorporation of their painting business. No other evidence was submitted to document the income generated from the business or to support the assertion that the applicant's husband could not operate the business without her. Further, no evidence was submitted concerning their living expenses to support an assertion that the applicant's removal would result in financial hardship to her husband. The applicant's husband further states in a letter dated May 15, 2006 that he relies completely on the applicant for financial and emotional support because he is unemployed due to a work-related accident. *See Letter from [REDACTED]* dated May 15, 2006. Documentation submitted with this letter indicates that the applicant's husband dislocated his wrist after falling from a ladder on February 25, 2004 and received worker's compensation because of this injury. The AAO notes, however, that no further documentation was submitted concerning this injury or the time period for which it rendered the applicant's husband unable to work. The evidence on the record is insufficient to support the applicant's assertion that her husband is still unable to work since dislocating his wrist in 2004 and must rely on the applicant for financial support.

The applicant's husband states that he relies on the applicant for emotional support and that she is the only person he can depend on. *See Letter from [REDACTED]* dated May 15, 2006. No further evidence was submitted concerning the applicant's husband's mental health or the potential effects of separation from the applicant. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. The record does not establish that any emotional difficulties the applicant's husband would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by the prospect of being separated from his wife is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 emotional and financial hardship the applicant's husband would experience if she is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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. 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.