**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Administrative Appeals Office*
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Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**

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[redacted]

DATE: OCT 05 2011 FILE: [redacted] Office: NEWARK FIELD OFFICE

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Rhew

for Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601) was denied by the Field Office Director, Newark, New Jersey, 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 U.S. since January 1995 (when she entered the U.S. without admission). The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States, and for seeking to obtain a visa or other benefit provided under this Act by fraud or willfully misrepresenting a material fact. The applicant is married to a U.S. lawful permanent resident (LPR), and she is the derivative beneficiary of an approved Form I-140, Petition for Alien Worker. The applicant seeks a waiver of her inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that she may live in the United States with her spouse and family.

In a decision dated November 9, 2009, the director determined the applicant had failed to establish that her husband would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that she timely retracted her material misrepresentations and fraud once she was placed into secondary inspection on March 5, 1993. Counsel asserts that the applicant is therefore not inadmissible under section 212(a)(6)(C)(i) of the Act. In the event that the applicant is found to be inadmissible, counsel asserts that the director erred in finding that the applicant's husband would not experience extreme emotional and financial hardship if the applicant were denied admission into the U.S. Counsel additionalLY asserts that the director erred in finding that an exercise of discretion was not warranted in the applicant's case. In support of these assertions, the record contains affidavits written by the applicant, her husband and her two U.S. citizen sons. The record also contains school documents for the applicant's sons, documentation relating to employment and the family's financial obligations, Brazil country conditions information, photos, and letters from friends attesting to the applicant's good character. The entire record was reviewed and considered in rendering a decision on the appeal

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.

The record in this case contains U.S. immigration service, sworn affidavit evidence reflecting that on March 5, 1993, the applicant attempted to enter the United States with a fraudulent, photo-substituted passport. The applicant was placed in secondary inspection, where she admitted that the passport was not hers. She was subsequently allowed to withdraw her application for admission, and she returned to Brazil the following day. In addition to the above evidence, the

record also reflects that on her Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), the applicant answered "no" to the question about whether she, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States or any other immigration benefit. The director's waiver denial decision indicates that the applicant additionally failed to reveal the above information during her adjustment of status interview with USCIS, and that her 1993, attempt to procure admission into the U.S. by fraud was discovered only upon USCIS review of a second alien file. A review of the evidence contained in the record clearly reflects that on March 5, 1993, the applicant attempted to procure admission into the U.S. by fraud and material misrepresentation. The evidence reflects further that the applicant attempted to obtain adjustment of her status to that of an LPR by material misrepresentation. The applicant does not contest that she made material misrepresentations on her Form I-485, or that she used a fraudulent passport in an attempt to gain admission into the U.S. in March of 1993. Through counsel, however, she indicates that because she voluntarily admitted to the U.S. immigration service that her passport was fraudulent, she *timely retracted* the evidence in March of 1993, and is therefore not inadmissible. The assertion is unconvincing.

In *Matter of M.* 9 I. & N. Dec. 118, 119 (BIA 1960), the Board of Immigration Appeals (BIA) held, with regard to *timely retractions*, that:

> Where an alien in an immigration proceeding testifies falsely under oath as to a material fact but voluntarily and without prior exposure of his false testimony comes forward and corrects his testimony, perjury has not been committed and the charge thereon is not sustained.

The present record reflects that the *timely retraction* exception does not apply to the applicant's case. It was only after the applicant was placed into secondary inspection and confronted with the government's knowledge that her passport was not authentic, that the applicant admitted she had attempted to gain admission into the U.S. with a fraudulent, photo-substituted passport in March 1993. Additionally, the record reflects that the applicant did not reveal on her Form I-485 or during her initial adjustment of status interview, that she had previously attempted to procure admission into the U.S. by fraud, and her 1993 fraud was discovered only upon USCIS review of a second alien file for the applicant. Because the applicant has failed to demonstrate that she retracted her misrepresentations and fraudulent documentation voluntarily and prior to exposure, her misrepresentations cannot be excused by a *timely retraction* exception. She therefore remains inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

> (1) The [Secretary] may, in the discretion of the [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 [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 applicant is married to a U.S. lawful permanent resident. The applicant's spouse is a qualifying relative for section 212(i) of the Act, waiver of inadmissibility purposes.

Section 212(i) 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).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez, supra* at 565, the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. *Id.* The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568; *Matter of Pilch,* 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige,* 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai,* 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim,* 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy,* 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the BIA has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige,* 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record in this case contains references to hardship the applicant's U.S. citizen children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

In support of the applicant's extreme hardship claim, the record contains an affidavit written by her husband stating that he loves his wife and cannot imagine living without her. He states that he is unemployed due to the bad economy, and that the applicant supports him and their two sons financially. He states that his sons will be unable to attend college without the applicant's financial support. The record contains an affidavit written by the applicant stating, with regard to hardship, that she and her family are suffering financially and that a house lease-to-own they had with friends cost her family over $120,000, and resulted in her family's eviction from their home in late 2006. She indicates that her husband became depressed due to their financial struggles, and that as a result, he abandoned the family and went to Brazil for several months. The applicant continued working at a cleaning company during this time, and she and her youngest son lived with friends. The applicant states that her husband has not worked since he returned from Brazil, and that she is the only financial support for their family. She wants to help her older son financially so that he can return to college. She also indicates that her youngest son is upset and worried about the future, and would experience emotional hardship if her family were separated and she had to return to Brazil. The record contains letters written by the applicant's two U.S. citizen sons (23 and 13 years old). The older son states that his mother helps him financially, physically and mentally, that he lives with his family, and that he would be lost without his

mother. The younger son states that his father is unable to support the family, and that he depends on his mother to provide for him. He states further that he wants to stay in the U.S., that he is doing well in school, and that he wants to continue his studies in the U.S. Also included in the record are birth certificates for the applicant's children, as well as her marriage certificate, and evidence of her husband's LPR status since 2007. The record additionally contains school records for the applicant's children and family photos. Financial evidence includes federal tax return evidence, a rental lease agreement, and bill documentation. Brazil country conditions information and two letters from the applicant's friends attesting to the applicant's good character are also contained in the record.

Upon review, the AAO finds that the evidence in the record fails to show that the 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 evidence fails to establish that the applicant's husband would experience extreme emotional and/or financial hardship in either the U.S. or in Brazil if the applicant's waiver application is denied. The record contains no medical or other documentary evidence to corroborate the claim that the applicant's husband suffers from depression. The record also contains no evidence to corroborate the claim that the applicant's family was evicted from their home, that the applicant's husband is not working, or that the applicant supports the family through cleaning jobs. An undated rental agreement contained in the record reflects only that the applicant's family had a month-to month home rental agreement for $1300.00 a month, and the record contains no documentary evidence to demonstrate that the applicant's husband is unable to find work, or that the family is dependent on financial contributions from the applicant to pay for home and other expenses. The record contains a New Jersey Business Name Certificate indicating that the applicant operated a carpentry business called, [redacted] in 1999, and 2002 and 2005 federal income tax evidence reflects that the applicant and her husband filed joint federal tax returns listing income from [redacted] as their joint and sole source of income. However, no claims were made in either the applicant's or her husband's affidavits to indicate that the applicant operated the [redacted] business on her own in the past or in the present. The applicant additionally submitted no documentary evidence to demonstrate that she has received income from cleaning service work. It is further noted that the applicant's oldest son is 23 years old, and could presumably, if necessary, work to help pay for his and/or the family's expenses.

The general statement that the applicant's husband could not live without his wife near him is uncorroborated by evidence, and fails to establish that the applicant's husband would experience emotional hardship beyond that normally experienced upon separation from a family member if the applicant's husband remained in the United States without the applicant. It is further noted that the applicant's husband was born and raised in Brazil, and the evidence fails to establish that neither he nor the applicant would be unable to find work in Brazil if they returned, or that the applicant's husband would experience extreme hardship integrating into Brazilian culture and society.

Although the applicant and her family's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)).

In addition, country conditions evidence contained in the record is general, and fails to demonstrate that the applicant's husband or children would face extreme emotional, financial or physical danger in Brazil. It is also noted that no 2011 DOS Travel Warnings or Alerts exist for Brazil, and 2011 DOS country specific information for Brazil is general and fails to demonstrate that the applicant's husband or sons would experience extreme emotional, financial or academic hardship in Brazil. *See* U.S. Department of State, Brazil Country Specific Information (November 5, 2010).[1]

Upon review of the totality of the evidence, the AAO finds that the applicant failed to establish extreme hardship to her LPR spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.