



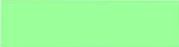
U.S. Citizenship
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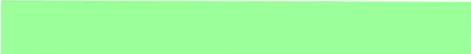


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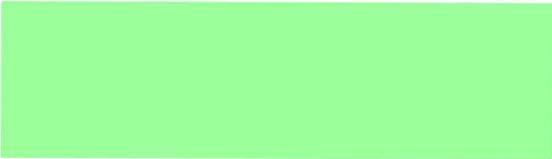
FILE: 

IN RE:

Applicant: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in cursive script, reading "Michael Shumway".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Tampa, Florida, denied the waiver application and 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 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 having procured a visa to the United States through fraud or misrepresentation, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for over one year. She is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by her U.S. citizen mother. She seeks a waiver of inadmissibility in order to remain in the United States with her U.S. citizen mother and children.

In a decision dated February 21, 2013, the field office director found the applicant to be inadmissible because he had submitted false information in the visa application he filed at the U.S. consulate in Rio De Janeiro, Brazil. The field office director also noted that the applicant had been found inadmissible for accruing unlawful presence in the United States from 2000 to 2010. In addressing the applicant's claims of extreme hardship to a qualifying relative, the field office director stated that the evidence the applicant had submitted regarding hardship to her children could not be considered because children are not qualifying relatives. The field office director further found that the evidence was insufficient to establish that the applicant's mother would face extreme medical and financial hardship if the applicant were removed. Accordingly, the field office director denied the application.

On appeal, counsel for the applicant contends that the field office director erred in finding that the applicant's mother would not suffer extreme hardship if the waiver application were denied. Counsel asserts that the field office failed to address all hardship to the applicant's mother in the aggregate and disregarded relevant evidence, including the applicant's mother's surgery and ongoing physical and mental health conditions, age, and family and community ties in the United States. Counsel also claims that the field office director failed to consider country conditions information, financial hardship, the applicant's long residence in the United States, and the hardship the applicant's U.S. citizen children would endure if the waiver were denied.

The record includes, but is not limited to: statements from the applicant, her mother, and her sister; medical records relating to the applicant's mother and sister; information regarding the applicant's family ties in the United States; financial and employment records; information regarding the applicant's children's education; letters from a Licensed Clinical Christian Counselor regarding the applicant's mother and children; a letter from a minister regarding the applicant and her children; and country conditions information. 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:

- (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 reflects that the applicant entered the United States with a B2 visa on January 30, 2000. She remained in the United States until June 25, 2010. On February 16, 2012, she applied for a second B2 visa in person at the U.S. consulate in Rio de Janeiro, Brazil. On her visa application, she indicated that she had never been to the United States before and had not received a U.S. visa previously. Based on her application, the applicant received a B2 visa and arrived in the United States on March 13, 2012. During her adjustment of status interview on September 10, 2012, the applicant testified that she had previously been in the United States from 2000 to 2010.

The applicant appears to contest the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act. In her written statement, the applicant claims that “at no time did [she] give false statement or misrepresent [her]self” in her adjustment of status interview. She states that she gave the interviewing officer truthful information about her period of residence in the United States. Pursuant to section 291 of the Act, the applicant bears the burden of demonstrating by a preponderance of the evidence that she is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility “is of equal probative weight,” the applicant cannot meet her burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759, 762 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, to have had a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The Board of Immigration Appeals (Board) has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-49 (BIA 1960; AG 1961).

The applicant has failed to meet her burden of demonstrating that she is not inadmissible. Although the applicant testified truthfully during her adjustment of status interview, she did not disclose her prior unlawful residence in the United States on the visa application she filed in February 2012. If the applicant had truthfully answered the questions on her visa application regarding her prior visa and visit to the United States, she would have been found inadmissible due to her unlawful presence in this country for more than one year and her 2012 visa application likely would have been denied. Therefore, the applicant did misrepresent a material fact in order to gain a visa to the United States and she is inadmissible under section 212(a)(6)(C)(i) of the Act.

As noted above, the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year. Section 212(a)(9) 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.

The applicant accrued unlawful presence in this country from the expiration of her visa in 2000 until her departure in 2010. The applicant has not contested this ground of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act as the daughter of a U.S. citizen. Section 212(a)(9)(B) provides:

(v) Waiver.- The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

Section 212(i) of the Act provides:

- (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.

A waiver under either section is dependent first upon a showing that the bar imposes an extreme hardship to the applicant's U.S. citizen or lawfully resident spouse or parent. The applicant's U.S. citizen mother is the only qualifying relative in this case. Although the applicant has submitted significant evidence regarding hardship to her children, the applicant's children are not qualifying relatives under sections 212(a)(9)(B)(v) and 212(i) of the Act. Therefore, hardship to them will be considered only to the extent that it results in hardship to the applicant's mother. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or U.S. 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 Board 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 Board 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 Board 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, counsel asserts that the applicant’s mother would suffer extreme hardship if separated from the applicant because of serious medical conditions requiring the applicant’s assistance and because she could not afford to maintain close ties by visiting the applicant and her children in Brazil. Counsel also asserts that the applicant’s mother would suffer extreme hardship if she relocated to Brazil as a consequence of her age, loss of employment and reduction in standard of living, serious medical conditions requiring family assistance, and separation from family members and her life in the United States.

We find that the applicant has failed to demonstrate that her mother would experience extreme hardship if separated from the applicant. The applicant’s mother does not claim in her written statement that she cannot be separated from the applicant. Similarly, the applicant barely mentions her mother in her written statement, instead focusing on hardship to her children. In a letter dated March 5, 2013, [REDACTED] a Licensed Clinical Christian Counselor, reports that the applicant’s mother “has both emotional and physical concerns that would seriously affect her well being [sic] without the assistance of her daughter and grandchildren.”

The counselor explains that the applicant's mother has "chronic back pain and . . . a history of meningitis" which result in an "inability to care for herself" when she is under stress. Therefore, she asserts, the applicant's mother requires assistance with housekeeping, shopping, cooking, basic hygiene, and attending doctor's appointments.

However, neither the medical records nor the written statements of the applicant and her mother support the claim that the applicant's mother is unable to care for herself. Medical records from Dr. [REDACTED] DC, show that the applicant's mother received treatment in November 2012 for muscle and joint pain for which "[s]acroiliac joint dysfunction could be responsible" The records further indicate that the applicant's mother has "degenerative joint disease, lack of core stability and history of previous meningitis attacks." However, the record does not contain any explanation of the effects of these medical issues on the long-term health and functioning of the applicant's mother. Additionally, the record demonstrates that the applicant's mother works full time, earns a steady income, owns her own vehicle, and has approximately \$17,900 in her bank account. Accordingly, we find that the record lacks evidence to support claims that the applicant's mother requires the daily care of others, and the applicant in particular.

Furthermore, even were the applicant's mother to require family assistance, the evidence is insufficient to show that other family members are unable or unwilling to provide that help. The applicant has provided a list indicating that her mother's brother, sister-in-law, sister, brother-in-law, second daughter, and numerous nieces and nephews also reside in Florida. We acknowledge that the applicant's younger sister, [REDACTED] claims in a November 14, 2012 letter that she relies on her mother and the applicant for care due to her own serious health problems. However, the record also contains a Verification of Employment for the applicant's mother, dated November 11, 2012, which is signed by [REDACTED] indicating that [REDACTED] works as the president and owner of [REDACTED] and is her mother's employer. The record therefore does not support the claim that [REDACTED] requires significant care from her mother. Furthermore, even if Tarcilla were unable to assist her mother, there is no evidence that the other close relatives living nearby would be unable or unwilling to do so.

The AAO also finds that the applicant has failed to show that her mother would face extreme hardship upon relocation to Brazil. Neither the applicant nor her mother has asserted that her mother would be unable to relocate. The record also indicates that the applicant's mother is originally from Brazil. Counsel states in her brief that the applicant's mother has chosen to remain in the United States due to her employment and the belief that she "would not be able to replace her salary and lifestyle in Brazil." Counsel continues that "otherwise, [the applicant's mother] would live in Brazil." The applicant has not submitted evidence that substantiates this claim. On this issue, the country conditions information submitted is general, and a lower standard of living alone is insufficient to establish extreme hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568. We acknowledge that the applicant's mother may experience some financial hardship as a consequence of leaving her employment in the United States, but the applicant has not demonstrated what employment prospects may or may not exist for her

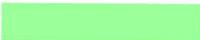
mother in Brazil, or shown the severity of any financial hardship she is likely to face there. While counsel also claims that the applicant's mother would be unable to relocate because she is 51 years old and is "deeply immersed . . . in the social and cultural life of the United States," there is no evidence that her age or her family ties would prevent her from readjusting to life in a country with which she is familiar and which she has visited recently. Although separation from her family in the United States and a change of lifestyle may constitute a hardship, the evidence does not establish that it would rise to the level of extreme hardship when considered with all other hardship factors in this case. *See id.*; *see also Matter of O-J-O-*, 21 I&N Dec. at 383.

Counsel asserts that the applicant's mother's mental and physical health conditions would make relocation very difficult for her, but, as stated above, the record does not support this claim. Additionally, medical records from the [REDACTED] dated December 6, 2012, and Dr. [REDACTED] dated May 7, 2012, show that the applicant's mother has received significant medical care in Brazil, including an appendectomy on July 16, 2010 and treatment for a "transverse colon polyp," "esofagite [sic] erosive moderated," and "erosive gastritis" on May 7, 2012. This evidence suggests that the applicant's mother has been able to receive appropriate medical care in Brazil and that she has done so recently, even after becoming a U.S. citizen on June 29, 2006. Consequently, the AAO finds that the applicant has not met her burden of showing that her mother would experience extreme hardship upon relocation to Brazil. Even when considered in the aggregate, the evidence does not establish that the applicant's mother would face extreme hardship if the applicant's waiver application were denied. *Matter of O-J-O-*, 21 I&N Dec. at 383.

As noted above, the applicant focuses mainly on the hardship she believes her children will suffer if they relocate to Brazil with her, but the applicant's children are not qualifying relatives in this proceeding. The applicant states that during the two years she and her children lived in Brazil, it was extremely difficult for them, as they do not speak Portuguese, were bullied in school, and did not adapt to the culture. She also claims that she struggled to support her children as a single mother in Brazil. She states that she cannot tell her children that they must return to Brazil. Counsel for the applicant also emphasizes hardship to the children and has provided country conditions information that focuses on the education system in Brazil. Additionally, Licensed Clinical Christian Counselor [REDACTED] advises in a letter dated November 26, 2012 that relocation "would prove to be detrimental to the children's health and mental stability." While we acknowledge the applicant's concerns regarding the effect of relocation on her children, children are not qualifying relatives for purposes of a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act. The applicant has not demonstrated how any hardship to her children would result in extreme hardship to her mother, who is her only qualifying relative.

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.

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Page 9

NON-PRECEDENT DECISION

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.