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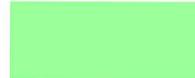
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



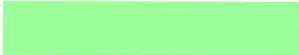
DATE: APR 18 2014

Office: WEST PALM BEACH

FILE:



IN RE: Applicant:



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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, West Palm Beach, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record establishes that 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, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant was also found to be inadmissible to the United States under 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 more than one year. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 14, 2012.

In support of the instant appeal, submitted by counsel in March 2012 and received at the AAO in November 2013, counsel for the applicant submits the following: a brief; copies of correspondence between counsel and the USCIS on the applicant's behalf; medical documentation pertaining to the applicant's spouse; copies of authorities cited by counsel; and a copy of the applicant's Form I-601 submission. In addition, in June 2012, counsel submitted documentation in support of his assertion that the applicant was not inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Further, in July 2012, counsel submitted documentation establishing that the applicant was approximately five weeks pregnant. The entire record was reviewed and considered in rendering this decision.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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

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 . . .

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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...

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence, the record indicates that the applicant entered the United States with a fraudulent passport and nonimmigrant visa in 2000. The applicant departed the United States and re-entered the United States, in February 2008, March 2009 and November 2010, based on a grant of advance parole. In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. In accordance with the BIA's decision in *Matter of Arrabally*, the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the AAO concurs with counsel that the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Nevertheless, the applicant remains inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, as the record establishes that the applicant

procured entry to the United States in December 2000 by presenting a fraudulent passport and nonimmigrant visa. On appeal, the applicant does not contest this finding of inadmissibility.

A waiver of inadmissibility under 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 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 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 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. I.N.S.*, 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.

The applicant's U.S. citizen spouse asserts that he will suffer emotional and professional hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he explains that his relationship with the applicant has renewed his faith in the possibility of having a life-long, successful marriage. He maintains that he has truly found his soul mate in the applicant. He explains that she is caring, independent and genuinely enjoys being with and fostering relationships with his family. The applicant's spouse further contends that he suffers from Crohn's Disease and his symptoms would be aggravated with the grief of losing his wife. Finally, the applicant's spouse asserts that he works diligently to ensure that his business is successful and the stress and aggravation from losing his wife would cause him to experience professional disruption. *See Affidavit from* [REDACTED] dated September 6, 2011.

In a separate statement, the applicant explains that her husband traveled with her to Brazil to meet her family but due to his Crohn's Disease, she watched him suffer on a daily basis through the many symptoms of the disease. Due to a deviation in his diet, his symptoms were aggravated. She maintains that her husband lost blood on a daily basis and quickly became fatigued. She explains that her family's home is remote and medical care in Brazil is substandard. She notes that in addition to concerns for her husband's health, she was worried for his safety due to the levels of crime in Brazil. *See Letter from* [REDACTED] dated September 6, 2011.

With respect to the emotional hardship referenced, a letter has been provided by [REDACTED] Ph.D. Dr. [REDACTED] states that were the applicant to relocate abroad, the applicant's spouse would experience profound anxiety, grief reactions, and fears that will grow into full-blown aggravated Crohn's Disease and quantifiable depression. *See Letter from* [REDACTED] Ph.D., dated July 15, 2011. Counsel has also provided documentation establishing that the applicant's spouse has been diagnosed with Central Serious Retinopathy as a result of extreme stress. *See Patient Referral from* [REDACTED] Moreover, evidence of the applicant's spouse's gainful self-employment as a business owner has been provided. In addition, counsel has submitted documentation establishing the distance between the applicant's family home and major cities in Brazil and the high

cost to the applicant's spouse, in terms of time, money and business disruption, associated with traveling to Brazil to visit his wife regularly. Finally, the U.S. Department of State confirms that the crime rate in Brazil remains high and Brazil's murder rate is more than four times higher than that of the United States and rates for other crimes are similarly high. Additionally, medical care varies in quality, particularly in remote areas, and it may not meet U.S. standards outside the major cities. See *Country Specific Information-Brazil, U.S. Department of State*, dated October 15, 2013. The record reflects that the cumulative effect of the emotional and professional hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's U.S. citizen spouse asserts that he does not want to relocate to Brazil as he would suffer. To begin, the applicant's spouse details that he was born and raised in the United States and has no ties to Brazil. He maintains that he is unfamiliar with the country, culture, customs and language of Brazil. He further notes that he has extensive family ties in the United States, including the presence of his elderly grandmother, who he visits frequently; his sister and her family; aunts and uncles; and cousins. Further, the applicant's spouse explains that it would be impossible to continue managing his company remotely from Brazil as he has a continuous need to engage with clients and staff and a relocation abroad would force him to sell his business or lay off his dedicated employees. Finally, as outlined above, the applicant's spouse maintains that his health will suffer in Brazil and he will be concerned for his safety and well-being due to the high rates of crime in Brazil. *Supra* at 2-5.

The record reflects that the applicant's spouse was born and raised in the United States. Were he to relocate abroad to reside with the applicant, he would have to adjust to a country with which he is not familiar. He would have to leave his community, his business, and his extended family, and he would be concerned about his medical and mental well-being and safety. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen husband would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying

circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to relocate to Brazil, regardless of whether he accompanied the applicant or stayed in the United States; the applicant's community ties; the payment of taxes; the applicant's gainful employment while in the United States; support letters; the passage of more than thirteen years since the applicant's entry to the United States by fraud or willful misrepresentation; and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's entry to the United States by fraud or willful misrepresentation and periods of unauthorized presence and employment while in the United States.

Although the immigration violations committed by the applicant are serious in nature, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

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 been met.

ORDER: The appeal is sustained.