U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 0 6 2015

FILE #:

APPLICATION RECEIPT #:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the application for a waiver of inadmissibility. 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 one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, her U.S. citizen spouse filed on her behalf. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse.

The Field Office Director concluded that the applicant did not establish extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated November 19, 2014.

On appeal, the applicant, through counsel, submits additional evidence and states that her spouse will suffer extreme hardship if she is not granted a waiver of inadmissibility. *Letter accompanying Form I-290B, Notice of Appeal or Motion*, filed December 19, 2014.

In support of the waiver application, the record includes, but is not limited to: biographical information for the applicant, his spouse, and their daughter; a letter from a psychiatrist concerning the applicant's spouse's mental health; photographs; financial documentation; insurance records; country-conditions information concerning Brazil; and documentation of the applicant's immigration history. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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

> (B) Aliens Unlawfully Present.-
>
> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
>
> (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 the Department 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 [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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The record indicates that the applicant was admitted to the United States as a nonimmigrant visitor on November 28, 2002, with permission to remain in the United States for six months. The applicant remained in the United States until March 6, 2006, living and working without authorization during that period. The applicant subsequently applied for a student visa at the U.S. Consulate in Brazil. On her visa application, signed and dated March 10, 2006, the applicant stated that she had remained in the United States for 20 days after her prior entry on November 28, 2002.

At the U.S. port of entry at Dulles International Airport on March 28, 2006, the applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence, as well as section 212(a)(7)(B)(i)(II), 8 U.S.C. §1182(a)(7)(B)(i)(II), for not possessing a valid nonimmigrant document. The applicant was allowed to withdraw her application for admission and returned to Brazil. Prior to departing, in a sworn statement taken at International Airport, the applicant indicated that she did not state on her student-visa application the length of her prior stay in the United States, but as noted earlier, on her visa application signed and dated 10 days earlier, she had stated that she had only been in the United States for 20 days on her prior visit.

After her student visa was revoked and she was returned to Brazil, the applicant again traveled to the United States and, using a different passport, was admitted as a visitor on December 8, 2006. She has remained in the United States since that time. The record supports the Field Office Director's finding that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. We also find, however, that the applicant is inadmissible under section 212(a)(6)(C)(i), for having procured a visa to the United States through willfully misrepresenting a material fact. Specifically, she procured a student visa after misrepresenting the length of her prior stay in the United States, and that information was material to her non-immigrant intent under the Act and to her eligibility for a student visa.

Section 212(a)(6)(C) states:

> (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 a waiver for fraud and material misrepresentation. That section states 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 eligible to apply for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and section 212(i) of the Act, the standard for which is the same. Under both provisions of the Act, the applicant's only qualifying relative is her U.S. citizen spouse. The applicant's U.S. citizen daughter is not a qualifying relative under the Act. In order to qualify for this waiver, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant or the applicant's daughter will not be separately considered, except as it is shown to affect the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 deportation, 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, 885 (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*, 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, the applicant states that her spouse is already suffering extreme hardship and will continue to suffer from extreme hardship if he is separated from her. Specifically, his emotional hardship has intensified as a result of his depression and anxiety related to the denial of her waiver application. In an undated letter based on an interview that was conducted on December 8, 2014, an evaluating psychiatrist stated that the applicant's spouse was referred to him by another doctor, who had treated her spouse's mild depression, due to "escalating symptoms of depression and anxiety." The psychiatrist reports that the applicant's spouse has suffered from depression for years and that the current situation is aggravating his existing condition and intensifying his symptoms. The applicant submits no records, however, reflecting her spouse's consultations with the referring physician and the record lacks evidence to corroborate claims of an earlier diagnosis of mild depression. The psychiatrist diagnoses the applicant's spouse with adjustment disorder, major depression, anxiety disorder, and acute stress disorder. The psychiatrist, moreover, reports that the applicant's spouse fears the impact of the applicant's departure on his ability to take care of their daughter and on his work performance. The applicant's spouse reported to the psychiatrist that his work "has suffered greatly in an escalating fashion" due to his inability to concentrate and

the psychiatrist also states that the applicant's spouse reported cognitive decline. The applicant submits no documentation to support a determination that the applicant's work has suffered as a result of deteriorating mental health. The applicant's spouse also reported that he cannot sleep and "is in constant fear on the verge of panic" that the applicant will be sent away. The psychiatrist's statement that the applicant's spouse lacks "other close family or relations" and that this contributes to his fears of loss and isolation contradicts the applicant and her spouse, who stated that the applicant's spouse is close to his parents and only sibling, who reside nearby. The psychiatrist concludes that if the applicant is not allowed to remain with her spouse and daughter, her spouse's condition will worsen and he could be hospitalized or institutionalized. The psychiatrist recommends continuous psychiatric treatment with psychotherapy and pharmacotherapy, and he notes that the applicant's spouse scheduled recurring visits to his office to allow him to monitor his situation. The psychiatrist does not indicate what medications he prescribed.

The applicant's spouse, in his statement dated July 10, 2013, indicated that he has suffered anxiety, panic attacks, sleepless nights and stress as a result of the thought of losing the applicant. The applicant, in her statement dated July 20, 2013, also stated that her spouse suffered panic attacks and was drinking more heavily. Although the applicant's assertions about her spouse's existing mental health condition 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. *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)). Taking into account the lack of documentation indicating that the applicant's spouse suffered a pre-existing condition and that he is experiencing workplace performance problems, in addition to psychiatrist's statements conflicting with other statements about the existence of close family for the applicant's spouse, we afford less weight to the psychiatrist's statements concerning those issues.

In addition, the applicant stated her husband would experience financial hardship if he were to remain in the United States. She states that he may incur debt if he would have to pay for expensive airfare to Brazil to visit her and their child. The record indicates that the applicant's spouse reported an income of $76,264 in 2012. The applicant submits no evidence reflecting the cost of airfare to Brazil, but she indicates that flights cost over $1,000. The record lacks sufficient information to support finding that the applicant's spouse would not be able to afford to visit Brazil based on his income or that he otherwise would experience financial hardship.

The applicant submits no additional evidence concerning the hardship that her spouse would suffer as a result of their separation if she is removed. Although the applicant's spouse's emotional and psychological response to the thought of being separated from his spouse is understandable and relevant to evaluating his hardship, the record lacks documentation that supports concluding that his anxiety and depression, in addition to his financial hardship, would

amount to extreme hardship. We recognize the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship is beyond that which is normally experienced by families dealing with removal or inadmissibility. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

The applicant states that her spouse would also suffer extreme hardship were he to relocate to Brazil to reside with her as result of his family ties in the United States, his inability to obtain employment in Brazil, and concerns for his safety in that country. The applicant states that although her spouse is a native of Portugal and speaks Portuguese, he is not fluent in the written language and this would prevent him from obtaining employment in Brazil. The applicant also submitted general documentation concerning the economic situation in Brazil, which indicates that Brazil's economy outweighs the economies of all other South American countries, although its economy is not as strong as the U.S. economy.

In addition, the applicant states that the crime in Brazil is worse than in the United States, and the health and medical systems in the United States are better. She also states that it is "unfair" that the couple's daughter should have to obtain an education in Brazil, as she is a U.S. citizen and should have the best possible education. The applicant states that the availability of medical care is particularly important because of her spouse's past mental health issues. As stated previously, the record lacks evidence of her spouse's history of mental health issues, and 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. at 165. The applicant also has not provided corroborative evidence of her spouse's family ties to the United States. The applicant and her spouse state that the applicant's spouse's parents are very important to the applicant, that he assists them, and that separation from them would cause him emotional hardship, but she provides no objective documentation to support that assertion. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Brazil, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *See Matter of O-J-O-*, 21 I&N Dec. at 383.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's U.S. citizen spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not established extreme hardship to a qualifying relative, as required under sections 212(a)(9)(B)(v) and 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 she merits a waiver as a matter of discretion.

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