

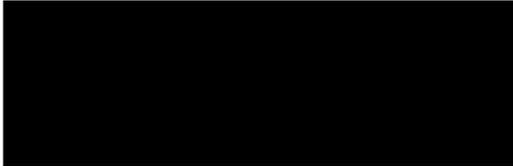
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H6

DATE: JUL 18 2011 Office: LIMA, PERU

File: 

IN RE:

Applicant: 

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

ON BEHALF OF APPLICANT:



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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The I-601 waiver application was denied by the Acting Field Office Director, Lima, Peru. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Brazil. He was found to be inadmissible to the United States pursuant to 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 one year or more and seeking admission within ten years of his last departure. He is married to a United States citizen. He 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).

The Acting Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 18, 2009.

On appeal, counsel states that the Acting Field Office Director's decision was erroneous and that the evidence submitted establishes the applicant's spouse will experience extreme hardship. *Form I-290B*, received on April 20, 2009.

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.

....

The record indicates that the applicant entered the United States without inspection in April 1999 and remained until he departed voluntarily in July 2008. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The record includes, but is not limited to, counsel's brief; statements from the applicant's spouse; medical records pertaining to the applicant's spouse; a statement from [REDACTED], dated June 9, 2011, related to the applicant's spouse; copies of medical bills relating to injuries and illnesses suffered by the applicant's spouse; letters from the applicant's employers; an employment offer as a professional fighter for the applicant; copies of internet periodicals pertaining to the applicant's career as a professional fighter; copies of utility bills and accumulated debt for the applicant's spouse; and copies of birth certificates for the applicant and his spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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-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 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*, 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 applicant’s spouse has submitted several statements. She explains that she was injured in a serious car accident in January 2009, was hospitalized for a period of time, and sustained injuries which have required years of chiropractic care, pain management and physical rehabilitation. *Statement of the Applicant’s Spouse*, dated April 20, 2011. She explains that she has also been diagnosed with heart disease and is pre-diabetic. She asserts that these conditions require routine medical checkups with her doctors, and that relocating to Brazil would disrupt her continuity of care with her current doctors and interrupt her ability to receive medical care derived through her current health insurance.

The applicant’s spouse also asserts that she does not speak Portuguese, has no family ties in Brazil and would have to sever her family and community ties in the United States if she relocated. She asserts that she would fear for her safety due to the conditions in Brazil, as the building where the applicant resides has already been robbed by an armed gunman, and that she is struggling financially with accumulated debt resulting from her efforts to support both herself and the applicant in Brazil.

Counsel for the applicant has submitted a statement detailing many of the applicant's spouse's assertions. *Brief in Support of Appeal*, dated May 7, 2009. Counsel explains that the applicant's spouse's injuries and physical disabilities would make it even more difficult for her to find employment if she relocated to Brazil, noting that she does not speak the language, is not familiar with the culture and has no family ties or resources there.

The record contains a copy of the police report for the automobile accident which injured the applicant's spouse in 2009. The record also contains the results of an MRI report discussing the spine injury of the applicant's spouse, dated February 26, 2009. The record also contains an Initial Report by [REDACTED] dated March 3, 2009. This evaluation concludes that the applicant's spouse has acute traumatic and thoracic joint dysfunction syndrome with associated headaches, cervical herniated disc, loss of antero-posterior cervical curve, bulging discs and muscle spasms. It further states that she will be receiving treatment three times per week for spinal mobilization therapy and other treatments such as trigger point massage therapy and electric muscle stimulation. The record also contains examination records from the hospital, but these documents do not provide any indication of the severity of the applicants' accident related injuries. The record contains a statement from [REDACTED] confirming that the applicant's spouse suffers from hyperlipidemia and is at strong risk for cardiovascular disease. The record contains numerous medical bills for the pain treatment and rehabilitation services related to the applicant's spouse's injuries.

These documents are sufficient to establish that the applicant's spouse suffered injuries in a serious automobile accident and as a result is required to attend physical therapy and receive medical treatments for pain and mobility. Relocating would disrupt the continuity of care she has with the doctors who are familiar with her history and condition, and interrupt her ability to receive treatments covered by her health insurance, resulting in a significant medical impact. The documents also indicate that she suffers from significant physical hardship, and as noted by counsel it would be reasonable to presume this would complicate her attempts to find employment in Brazil.

The record also contains sufficient evidence to indicate that the applicant's spouse has accumulated significant debt, compounding the financial impact of relocating to Brazil.

The evidence in the record establishes that the applicant's spouse would experience physical and medical hardship upon relocation, as well as financial hardship. When these impacts are considered in aggregate with the facts that she has little or no family ties in Brazil, would have to sever her family ties in the United States and is unfamiliar with the language and culture of Brazil, it is established that she would experience impacts which rise above the common hardships experienced by relatives who relocate and which rise to the level of extreme hardship.

The applicant's spouse has also explained that she is suffering physically, emotionally and financially due to separation from the applicant. *Statement of the Applicant's Spouse*, dated April 20, 2011. She recounts the injuries caused by an automobile accident in 2009 and explains the painful medical

treatments she has undergone since that time. She also states that she has been diagnosed with heart disease and is pre-diabetic.

The applicant's spouse further asserts that her injuries have left her disabled and, after losing her job and health insurance benefits in February 2011, she has had difficulty finding employment in a position that will accommodate her disability. She asserts that she has been unable to pay her medical debts, has accrued significant debt and is struggling to support herself financially. She also explains that the applicant is a professional fighter, but has been unable to find work in Brazil to support her as he would in the United States if he were allowed to return.

The record contains evidence indicating that the applicant's spouse has significant debt, including school loans in the amount of \$17,377, lingering medical bills and monthly financial obligations. The record also contains bank statements indicating that the applicant's spouse is supporting the applicant in Brazil. When these facts are considered in light of her injuries and difficulty finding employment it can be reasonably determined that the applicant's spouse is experiencing significant financial impacts due to separation. These factors will be considered when aggregating the impacts on her.

As noted above the record also contains sufficient documentation to establish that the applicant's spouse was in an automobile accident that left her injured and requires physical rehabilitation and other treatments for pain and mobility. While this impact alone is not sufficient to establish extreme hardship on a medical or physical basis, it will be considered when aggregating the hardship impacts on the applicant's spouse.

While there is nothing which indicates the applicant's spouse is experiencing any emotional hardship which rises above that commonly experienced by the relatives of inadmissible aliens, it is clear that the applicant's spouse suffers from several medical conditions, compounded by injuries sustained in a car accident, and is struggling to maintain employment to support herself and the applicant in the face of these challenges. The record contains a letter which verifies the applicant would be offered contracts as a professional fighter if he were allowed to return to the United States, as well as internet periodicals documenting his career and his ability to alleviate the hardship of the applicant's spouse by earning significant income.

When these hardship factors due to separation are considered in aggregate and in light of the common impacts of separation, it is clear they rise above the impacts normally associated with separation and constitute extreme hardship. Based on the evidence in the record the applicant has established that a qualifying relative will experience extreme hardship, and the AAO may now consider whether or not he warrants a waiver as a matter of discretion.

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 section 212(h)(1)(B) 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 AAO finds that the unfavorable factors in this case include the applicant's entry into the United States without inspection and unlawful presence. The favorable factors in this case include the presence of the applicant's spouse, the hardship she would experience upon relocation or due to separation, statements of moral character supporting the applicant, the lack of any criminal charges against the applicant during his residence here and the offer of employment illustrating applicant's promising career as a professional fighter. Although the applicant's immigration violations are serious and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, a favorable exercise of discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.