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



PUBLIC COPY



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Date: **JUL 25 2011** Office: OAKLAND PARK, FL

FILE: 

IN RE: Applicant: 

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

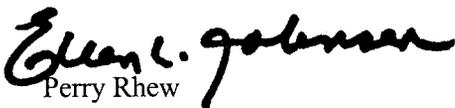
ON BEHALF OF APPLICANT:



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 waiver application was denied by the Field Office Director, Oakland Park, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 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 is married to a U.S. citizen and 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), in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated March 17, 2009.

On appeal, counsel contends the applicant established the requisite hardship and submits additional evidence of hardship, including, but not limited to: a psychological evaluation of [REDACTED] and documentation he is in arrears with child support payments, making him ineligible to receive a U.S. passport.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on November 5, 2007; an affidavit from [REDACTED] an affidavit and a letter from the applicant; a psychological evaluation of [REDACTED] copies of pay stubs, tax returns, and other financial documents; a letter from [REDACTED] employer; letters of support; a letter from the applicant's physician; copies of the applicant's medical records; photographs of the applicant and her husband; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Brazil and other background material; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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.

....

(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.

In this case, the record shows, and counsel concedes, that the applicant entered the United States on February 19, 2002, using a B-2 visitor visa with authorization to remain in the United States until August 18, 2002, but did not depart until September 2008. She was paroled into the United States on October 5, 2009. The applicant accrued unlawful presence from August 18, 2002, until the proper filing of her Form I-485 on February 27, 2008. Therefore, the applicant accrued unlawful presence of over five years. She now seeks admission within ten years of her September 2008 departure from the United States. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of her last departure.

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.

In this case, the applicant states that she has been having serious health problems since December 2007 when she became hemorrhagic. According to the applicant, she was losing too much blood, had nausea, palpitations, anemia, and low blood pressure, resulting in the inability to breathe or walk. She states she was given medication to stop the hemorrhage, but that it caused blood clots in her heart, resulting in palpitations, exhaustion, a bloated stomach, and difficulty breathing. She states she could not sleep, was vomiting, and taken to the hospital where she was diagnosed with atrial fibrillation. The applicant states she underwent heart surgery, spent six days in the hospital, and was told to return in six months for open heart surgery as the first surgery did not fix the problem. She further states that she could not afford surgery in the United States and had no choice but to go to Brazil for the surgery, which ultimately did not happen due to more complications. The applicant contends that she and her husband had to sell their car to pay for her trip and that they have depleted their savings. She states that when she was in Brazil, her husband was frantic, stopped sleeping and eating, and started chain smoking. *Affidavit of* [REDACTED] dated November 12, 2008; *Letter from* [REDACTED], dated July 10, 2008.

A letter from the applicant's husband, [REDACTED] states that before he met his wife, he suffered from depression and was an extremely heavy drinker. According to [REDACTED] before he met the applicant, as a result of his depression, he was unable to keep a job and had long periods of being homeless. [REDACTED] states that although he attended AA meetings, he could not stop drinking until he met the applicant and had a reason for living again. He states that after he learned his wife may not be able to stay in the United States, he spent three days in bed, barely ate anything, and started drinking again. In addition, [REDACTED] states that his wife has a friend who said she would hire him as a full-time, live-in handyman to take care of her home. [REDACTED] contends that if his wife departed the United States, he would become unemployed and homeless again. Furthermore, [REDACTED] states that his entire family lives in the United States, including his eighty-seven year old mother who has Alzheimer's. He contends he and his wife visit his mother every other day, administer her daily medications, and that they are the only people who look after her. [REDACTED] contends his mother lives off of Social Security payments, but that he often buys her groceries and helps her with other expenses. He contends they cannot afford hiring a caregiver and that his mother will continue to need his help in the future. Moreover, [REDACTED] states he cannot move to Brazil to be with his wife because he has no family in Brazil, has never been outside of the United States, and cannot get a passport until he pays off his child support payments in full. He also contends he does not speak Portuguese and knows nothing about Brazil except for the high crime rate. He contends his wife lost her nineteen year old son in 2000 due to violence in Sao Paulo. *Affidavit of [REDACTED]* dated November 12, 2008.

A letter from [REDACTED] mother states that she is an eighty-seven year old widow who is dependent upon her son for help in every way. She states he takes her to doctor's appointments, food shopping, and assists her with her medications. She also states he helps her financially when he can. She contends she does not know what she would do without her son. *Letter from [REDACTED]* undated.

A psychological evaluation of [REDACTED] states that he reported having always suffered from anxiety disorders, alcoholism, and agoraphobia. According to the psychotherapist, [REDACTED] reported going into a deep depression beginning in 1987 as a result of his first wife cheating on him and then leaving him. The psychotherapist states [REDACTED] depression led to alcoholism, job loss, and eventually, homelessness. According to the psychotherapist, it took ten years for [REDACTED] to fully recover from this depression. [REDACTED] reportedly has started to drink again after being sober for many years. In addition, the psychotherapist contends [REDACTED] is extremely worried about his wife's health which continues to deteriorate daily. The psychotherapist states that [REDACTED] currently works as a handyman and does work for a client who allows him and his wife to live in their guesthouse rent-free. [REDACTED] reports fearing being homeless again should his wife return to Brazil because his living arrangement is due to his wife's acquaintance. Furthermore, the psychotherapist contends [REDACTED] cares for his elderly mother. In addition, the psychotherapist contends [REDACTED] became delinquent in his child support payments and has resumed paying them only since his marriage to the applicant. The psychotherapist diagnosed Mr. [REDACTED] with recurrent Major Depressive Disorder and Panic Disorder with Agoraphobia. The psychotherapist contends that given [REDACTED] history of mental instability, without his wife, he would emotionally decompensate and become an unproductive member of society. *Psychological Evaluation*, dated April 13, 2009.

A letter from the applicant's physician states that the applicant has severe cardiomyopathy, atrial fibrillation, and anemia, requiring further medical care in Brazil. *Letter from* [REDACTED] dated July 8, 2008. Copies of the applicant's medical records indicate she has a possible pulmonary embolism and atrial fibrillation. The medical records indicate the applicant's heart is enlarged and that her lungs are congested, reflecting congestive heart failure. The record also includes instructions the applicant was given regarding her atrial fibrillation, defined as "an arrhythmia where the top chambers of the heart do not beat normally . . . caus[ing] a heartbeat that is not regular and may be too fast or too slow. . . . This may result in blood clots that can cause a stroke or other problem[, such as] heart failure [or] a heart attack."

A payment coupon from the Department of Revenue Child Support Enforcement indicates that as of March 6, 2009, [REDACTED] is \$15,165 past due in child support payments. The record contains a printout from the U.S. Department of State indicating that "if you are . . . in arrears of child support payments in excess of \$2,500, you are ineligible to receive a U.S. passport."

Upon a complete review of the record, the AAO finds that the applicant's husband, [REDACTED] will suffer extreme hardship if the applicant's waiver application were denied. The record shows that [REDACTED] has been diagnosed with major depressive disorder and panic disorder. The record further shows that he has a history of alcohol abuse and that he experienced periods of unemployment and homelessness as a result. According to the psychotherapist, considering [REDACTED] mental instability, if the applicant returned to Brazil and he decided to stay in the United States, he would decompensate emotionally to the point of being unable to be a productive member of society. In addition, the record shows that the applicant has been diagnosed with several serious health conditions including severe cardiomyopathy and atrial fibrillation. Although hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative, in this case, the AAO finds that the applicant's serious health conditions cause extreme emotional harm to [REDACTED] due to concern about the applicant's well-being and safety in Brazil, a concern that is beyond the common results of removal or inadmissibility. Considering these unique factors cumulatively, the AAO finds that the effect of separation from the applicant on [REDACTED] goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Moreover, moving to Brazil to avoid separation would be an extreme hardship for [REDACTED]. The record shows that [REDACTED] owes more than \$15,000 in child support payments and that, as a result, he is unable to obtain a U.S. passport. Therefore, [REDACTED] has no way to travel to Brazil, either to relocate or to visit the applicant. In addition, the AAO recognizes that [REDACTED] is currently fifty-five years old, was born in the United States, and has his entire family in the United States, including his elderly mother whom he helps care for. Moreover, according to [REDACTED] he has never been outside of the United States and does not speak Portuguese. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he had to move to Brazil is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the

Cervantes-Gonzalez factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: family ties in the United States including her U.S. citizen husband; the extreme hardship to the applicant's husband if she were refused admission; letters of support describing the applicant as a loving, gentle, and caring woman; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.