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

U.S. Citizenship and Immigration Services

[redacted]

H6

DATE: NOV 0 2 2011 OFFICE: HONOLULU, HAWAII FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii, and 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 more than one year and seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. Through counsel, the applicant does not contest this finding of inadmissibility. Rather, 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), in order to reside with his wife in the United States.

The District 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. *See Decision of District Director, Honolulu, Hawaii*, dated June 22, 2010.

On appeal, counsel asserts that the applicant is appealing an erroneous conclusion of fact and that the applicant's United States citizen spouse will suffer extreme hardship if the applicant's request to waive his inadmissibility is not granted. *See I-290B Brief in Support of Appeal*, receipted July 23, 2010.

The record includes, but is not limited to: Notice of Entry of Appearance as Attorney or Representative (Form G-28); Notice of Appeal or Motion (Form I-290B); Application for Waiver of Grounds of Inadmissibility (Form I-601); Application to Register Permanent Residence or Adjust Status (Form I-485); Petition for Alien Relative (Form I-130); a brief from counsel; a letter of support from the applicant's spouse; letters of support from the applicant's friends; medical letters; medical laboratory results; medical reports; articles concerning medical conditions; employment letters; pay stubs; W-2s and personal income tax returns; personal bank account statement; pre-approved mortgage letter; and a credit card bill. The entire record was reviewed and considered in rendering a decision on the appeal.

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-
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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 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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant initially entered the United States via Miami, Florida, on or about August 1, 2000. U.S. immigration officials admitted the applicant to the United States as a B-2 visitor. The record further establishes that the applicant remained in the United States until on or about December 19, 2003, when he voluntarily departed from the United States. The record also establishes that the applicant again entered the United States via Miami, Florida, on or about May 20, 2004. U.S. immigration officials admitted the applicant to the United States as a B-2 visitor, valid until on or about November 16, 2004. The record establishes that the applicant has not left the United States since his last entry on or about May 20, 2004.

Additionally, the record establishes that the applicant filed with the U.S. Citizenship and Immigration Services (USCIS) an Application to Register Permanent Residence or Adjust Status (Form I-485) as the spouse of a naturalized U.S. citizen on or about November 16, 2009.[1] USCIS denied the applicant's Application to Adjust Status on or about June 22, 2010.

The applicant accrued unlawful presence from in or around February 2001,[2] when his B-2 visitor status expired, until on or about December 19, 2003, when he voluntarily departed from the United States. The applicant again accrued unlawful presence from on or about November 17, 2004 because his B-2 visitor status expired, until on or about November 16, 2009, when he filed his Application to Adjust Status. The applicant then accrued unlawful presence from on or about June 23, 2010, the day after USCIS denied his Application to Adjust Status, through the present. *See* USCIS Memorandum, *Consolidation of Guidance Concerning Unlawful Presence for*

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[1] The AAO notes that the District Director's Decision incorrectly states that the applicant filed his Application to Adjust Status on November 16, 2010, given that the record establishes that the applicant filed his Application to Adjust Status on or about November 16, 2009. *See Decision of District Director, supra.* The District Director's incorrect statement concerning the year of the filing of the Application to Adjust Status appears to be a typo, and thereby, is harmless error.

[2] The AAO notes that the record is unclear concerning the exact date that the applicant's initial B-2 status ended.

Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act, from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 6, 2009 at pages 25, 28, and 33-34. The applicant is now seeking admission within 10 years of his December 19, 2003 departure. Accordingly, the applicant has accrued unlawful presence for more than one year, and as the applicant is seeking admission within 10 years of his last date of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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.

Counsel contends that the applicant's spouse would suffer extreme medical hardship upon separation from the applicant because of the applicant's inadmissibility: " ... [The applicant's spouse] would be completely devastated if [the applicant] were forced to return to Brazil. She cannot imagine life without her husband and has been at peace ever since she met him ... [she] has serious health problems and would suffer extreme and unusual hardship in his absence. Doctors have detected fibroids on [her] ovaries. They are debilitating cysts so painful that some days she cannot get out of bed. She also becomes dizzy and is unable to drive when the pain caused by her fibroids is extremely intense. [The applicant] helps [her] to cope with her illness and to carry on a normal routine to the extent possible. Doctors are treating [her] and evaluating her condition, but she still has chronic, unresolved pain ... Her OB/GYN suspects that the fibroids are linked to the couple's infertility ... Most recently, [she] underwent a painful laparoscopy procedure to remove the cysts and confirm her OB/GYN's suspicion that she has endometriosis ... it is imperative for her to have the love and support of her husband before, during and the after the laparoscopy ... In addition to her pelvic condition, [she] is afflicted with severe stress and has a history of panic attacks. Prior to meeting [the applicant], [she] felt panicked on a regular basis ... [The applicant] has calmed [her] nerves since coming into her life and she has not had an attack since ... Presently, she has difficulty sleeping and finds herself crying in bed at night. [She] cannot concentrate at work and feels unproductive. In March 2010, [she] visited a psychologist in Hawaii after [US]CIS denied [the applicant's] adjustment application ... [US]CIS also failed to

contemplate the couple's inability to conceive ... In addition to the physical obstacles, the emotional pain of being unable to conceive alone can be difficult. [The applicant and his spouse] are trying cope [sic] with this issue as a couple ... A possible geographic separation certainly would not help the couple's efforts to conceive." *I-601 Brief in Support of Waiver*, dated August 17, 2010. In support of her contention, counsel submitted a statement from the applicant's spouse, specifying: "I feel protected and safe with [the applicant], and I can depend on him to always be there when I need him ... I also struggled with anxiety and panic attacks before I met [the applicant] ... Since [the applicant] has been in my life, I haven't had a major panic attack. I think this is because I feel so emotionally secure with him. Since learning that [the applicant] was determined to be inadmissible ... my anxiety has significantly increased. I cry every single day, ... I find it hard to sleep ... I am often inconsolable. My emotional distress and lack of sleep are affecting my performance at work ... I have felt that I am starting to have another panic attack ... To date, I have not been able to get pregnant ... I don't know how I would manage daily life without [the applicant] ... I suffer from cysts and fibroid tumors on my ovaries ... some days I am confined to bed ... also causes dizziness ... I rely heavily on [the applicant's] assistance when I am incapacitated ... I will require long term monitoring and medical care ... we wouldn't be able to have children for at least 10 years, ... any pregnancy that I might go through would be considered higher risk because of my age." *Letter of Support from* [redacted] dated March 29, 2010.

Also in support of the applicant's spouse's medical hardship, counsel submitted a letter from the spouse's treating physician, indicating that the spouse has ongoing evaluations of chronic pelvic pain and infertility, possibly related to fibroids and/or endometriosis. *Letters of Support from* [redacted] dated March 24 and June 30, 2010. Counsel also submitted medical reports, indicating that the spouse has been diagnosed with fibroids and has been treated for anxiety attacks. *See Medical Report, Reviewed by* [redacted], *M.D.*, dated November 2, 2009; *see also Authorization to Disclose Protected Health Information from the* [redacted] faxed on March 22, 2010; *Medical Record for* [redacted] *from the* [redacted], dated April 12, 2003; *Visitation Summary, provided by* [redacted] *Psychiatric Social Worker*, dated March 25, 2010. And, counsel submitted articles that describe the symptoms and treatments for uterine fibroids and laparoscopy. *See* A.D.A.M., Google Health (2010), "Uterine Fibroids", *available at* https://health.google.com/health/ref/Uterine+fibroids; *see also* WebMD, Digestive Disorders Health Center (last updated: June 29, 2010), "Laparoscopy", *available at* http://www.webmd.com/digestive-disorders/laparoscopy-16156.

The record is sufficient to establish that the applicant's spouse has been diagnosed with fibroids and has experienced anxiety attacks, both conditions which may have been contributing factors to the spouse's infertility and a cause of hardship to the spouse. However, the record is insufficient to establish that the applicant's spouse's medical conditions would cause extreme hardship to the spouse if she were to be separated from the applicant because of his inadmissibility.

Specifically, the record contains copies of medical records, reports, and letters that identify the applicant's spouse's diagnoses of fibroids and anxiety attacks. Yet, the documents that were submitted do not contain a clear explanation concerning the courses of action specifically

necessary to treat the spouse's current conditions of fibroids, infertility, and anxiety attacks and how the applicant's presence would specifically assist the spouse. Rather, the record contains only a general description of the symptoms and possible treatments for fibroids and a general description of exercises for treating anxiety attacks. Moreover, the record does not contain any diagnosis of the spouse's current mental state. Counsel contends that the spouse has sought the services of a mental health professional because of recent determinations by USCIS concerning the applicant's inadmissibility. However, the record does not contain any diagnosis of the spouse's current mental state. Absent an explanation in plain language from the treating physician of the exact nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or mental state and the treatment needed.

The AAO recognizes that the applicant's spouse may experience some hardship as a result of separation from the applicant. However, the AAO finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Counsel also contends that the applicant's spouse will suffer extreme medical and financial hardship as a result of relocating to Brazil with the applicant: " ... It is critical that [the applicant's spouse] remain under the care of the doctors and specialists who are familiar with her case to best treat her fibroids and infertility ... [The applicant and his spouse] are grateful to have health insurance through [the spouse's] employment. Given the severity and chronic nature of her conditions, it is very important that [she] is covered. If the couple were to relocate to Brazil, [the spouse] would be unable to obtain employment[] or insurance of any kind. The Government provides public benefits, but not all are eligible. Also, often[,] individuals in Brazil must wait several months to see a public doctor ... Given the severe and enduring nature of [the spouse's] health issues, [the spouse] cannot afford to wait several months ... Her family still lives in Brazil and she sends them money regularly to help pay for her little brother's medical bills. He suffers from cerebral palsy and other serious medical conditions. [She] would be devastated if she were no longer able to offer her brother the financial assistance that he desperately needs to pay his medical bills ... Given the world-wide recession, it is unlikely that either [the applicant or his spouse] would be able to find employment if forced to depart. Even if they were to find a job, it is doubtful that the pay would be enough to support the couple, much less children ... earn a very good living in the U.S., they have secure jobs, and they would suffer financial hardship if forced to relocate ... they would not earn enough income to pay for treatment of their infertility. They would be forced to give up their dream of having a family ... medical care is expensive in Brazil and her brother could not afford treatment without her assistance." *I-601 Brief in Support of Waiver*, *supra*. In support of her contention, counsel submitted a statement from the spouse, specifying: "If I were to move to Brazil with [the applicant], obtaining adequate health care [sic] and treatment for my medical condition would be nearly impossible for me. Under the public health program, people generally have to wait for several months to see a public doctor, ... Private health insurance in Brazil is extremely expensive, and we would not be able to afford it right away, if ever. This would mean that I would have to suffer extreme pain for months on end ... nothing to go back to in Brazil. We have no jobs, no home there and it will be difficult to

reestablish ourselves financially. We wouldn't be able to earn much in Brazil, even though we both have experience in specialized occupations ... crime in Brazil is much worse ... I'd also have to be very aware of my surroundings- much more so than in the U.S. My mother has noted that I have become 'Americanized' ... I am not as vigilant as I should be for my personal safety ... violent crime and drug use are rampant." *Letter of Support from* [redacted], *supra.*

Also in support of the applicant's spouse's medical and financial hardship upon relocation to Brazil, counsel submitted a letter from the spouse's treating physician, indicating the spouse's ongoing evaluation of her medical condition. *See Letter of Support from* [redacted], *M.D.*, dated March 24, 2010. Counsel also submitted a letter from the spouse's employer, indicating the company's continued need to have the spouse's expertise at the company. *See Employment Letter from* [redacted], *Controller/Accounting Manager for* [redacted] dated June 30, 2010. And, counsel submitted a certified translation of medical reports concerning the spouse's brother's diagnosis of cerebral paralysis and his ongoing treatment. *See Medical Report for* [redacted] *issued by* [redacted] *Pediatric Urology*, dated November 7, 2000; *see also Medical Report for* [redacted] *issued by* [redacted] undated.

As mentioned previously, the record is sufficient to establish that the applicant's spouse has been diagnosed with fibroids and has experienced anxiety attacks, both of which may be causes of her infertility. However, the record is insufficient to establish that the applicant's spouse would suffer extreme medical hardship if the spouse were to relocate to Brazil because of the applicant's inadmissibility. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The record does not contain any evidence of country conditions information concerning medical conditions in Brazil that preclude the applicant's spouse from obtaining the necessary medical care to treat her fibroids, anxiety, and infertility. Accordingly, the record does not establish that the medical hardship that the spouse would experience goes beyond what is commonly experienced by relatives of inadmissible family members. Based on the record, the AAO cannot conclude that relocation with the applicant would result in extreme hardship to the applicant's spouse due to medical hardship.

Additionally, the record also is sufficient to establish that the applicant's spouse's brother suffers from cerebral palsy and that the applicant's spouse is a valued employee at [redacted]. However, the record is insufficient to establish that the applicant's spouse would suffer extreme financial hardship if the spouse were to relocate to Brazil because of the applicant's inadmissibility. As mentioned previously, the record does not contain any specific evidence of country conditions information. The evidence does not include any documentation of the economic conditions, employment opportunities, and social conditions in Brazil that preclude the applicant and his spouse from obtaining gainful employment there or acclimating to Brazilian society. Moreover, the record establishes that the applicant's spouse is from Brazil and still has family relationships there. *See Certificate of Naturalization for* [redacted], issued [redacted] 2009; *see also Petition for Alien Relative (Form I-130)*, approved February 18, 2010; *Letter of Support from* [redacted], *supra.* Thereby, the spouse

already has an established social network in Brazil. Accordingly, the record does not establish that the financial hardship that the spouse would experience goes beyond what is commonly experienced by relatives of inadmissible family members. Based on the record, the AAO cannot conclude that relocation with the applicant would result in extreme hardship to the applicant's spouse due to financial hardship.

The AAO recognizes that the applicant's spouse may experience some hardship as a result of relocation to Brazil with the applicant. However, the AAO finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

The applicant's spouse's situation, if she remained in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. In regards to establishing extreme hardship upon the qualifying relative having relocated abroad based on the denial of the applicant's waiver request, the AAO notes that this criterion has not been established.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States Citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.