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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  
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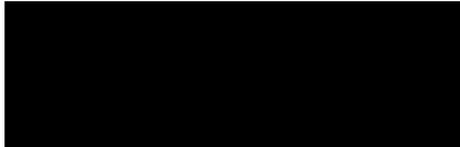
Office: LIMA, PERU

FILE: 

IN RE: Applicant: 

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

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, 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 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 again seeking admission within ten years of his last departure from the United States. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with her family.

In a decision dated June 23, 2009, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 23, 2009.

The applicant's attorney provided a memorandum in support of the applicant's waiver application. In the memorandum, the applicant's attorney asserts that the qualifying spouse is suffering from emotional and financial hardships as a result of her separation from the applicant. Further, the applicant's attorney stated that the qualifying spouse was born in the United States, has never lived outside of the United States, does not speak Portuguese, has no family ties to Brazil and has strong family ties to the United States. The applicant's attorney also contends that the qualifying spouse and her parents have medical issues that prevent her from relocating to Brazil. Moreover, the applicant's attorney states that the qualifying spouse would be unable to find a job because she cannot speak the language and because of the weak economy in Brazil. The applicant's attorney also indicates that the qualifying spouse would face concerns regarding medical care in Brazil.

The record contains an approved Petition for Alien Relative (Form I-130), an Application for Waiver of Grounds of Inadmissibility (Form I-601), a Notice of Appeal (Form I-290B), a memorandum in support of the applicant's appeal, a letter and declaration from the qualifying relative, financial documentation, doctor's letters and medical records regarding the qualifying spouse and her father, a declaration from the qualifying spouse's father and step-mother, a declaration from the qualifying spouse's niece, a declaration from the qualifying spouse's mother, a letter from the school of the applicant and qualifying spouse's daughter and birth certificates for the qualifying spouse and their daughter.

Section 212(a)(9)(B) 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-

....

(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.

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. 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-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*, 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 qualifying relative in this case is his wife, who is a United States citizen. The record indicates that the applicant entered the United States without inspection on February 10, 2005, and remained until 2008, when he voluntarily departed. The applicant accrued unlawful presence from February 10, 2005 until May 2008, a period in excess of one year. In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The documentation submitted relating to the potential hardships facing the applicant’s spouse includes Form I-601, Form I-290B, a memorandum in support of the applicant’s appeal, a letter and declaration from the qualifying relative, financial documentation, doctor’s letters and medical records regarding the qualifying spouse and her father, a declaration from the qualifying spouse’s father and step-mother, a declaration from the qualifying spouse’s niece, a declaration from the qualifying spouse’s mother, a letter from the school of the applicant and qualifying spouse’s daughter and her birth certificate.

As previously stated, the applicant's attorney asserts that the qualifying spouse is suffering from emotional and financial hardships as a result of her separation from the applicant. Further, the applicant's attorney stated that the qualifying spouse was born in the United States, has never lived outside of the United States, does not speak Portuguese, has no family ties to Brazil and has strong family ties to the United States. The applicant's attorney also contends that the qualifying spouse and her parents have medical issues that prevent her from relocating to Brazil. Moreover, the applicant's attorney states that the qualifying spouse would be unable to find a job because she cannot speak the language and because of the weak economy in Brazil. The applicant's attorney also indicates that the qualifying spouse would face concerns regarding medical care in Brazil.

The AAO finds that the applicant's spouse would suffer extreme hardship as a consequence of being separated from the applicant. With respect to the qualifying spouse's emotional and psychological issues, the record contains letters from her doctor, a letter and declaration from the qualifying spouse and letters from her family. In the doctor's letter, the doctor indicates that the qualifying spouse is suffering from severe depression and anxiety and has been taking medications for her depression, anxiety and sleeplessness. Further, the doctor indicates that the qualifying spouse's daughter's emotional issues have been aggravating her own issues. The doctor also states that the qualifying spouse has Hashimoto's Disease and high blood pressure, conditions that are aggravated by her stress and depression caused by the separation. The qualifying spouse, her mother, father and niece also submitted detailed letters describing the emotional pain and suffering that the qualifying spouse has been experiencing. For example, the qualifying spouse's father describes the qualifying spouse as tired all the time and as only getting two hours a sleep a night. He also indicates the emotional issues that the qualifying spouse's daughter is dealing with and how it affects the qualifying spouse. The qualifying spouse's father states that the qualifying spouse "feels so responsible for the pain and sadness" of her daughter. The qualifying spouse's parents have also been experiencing health issues, which has also negatively impacted the qualifying spouse. She relocated to Arizona to assist her father's wife in his care, as he is disabled and in poor health. The qualifying spouse's mother has also recently suffered a stroke. The record contains a detailed doctor's letter regarding the medical problems of the qualifying spouse's father and letters from family regarding her mother's health issues. The qualifying spouse's parent's medical problems also appear to be exacerbating the qualifying spouse's stress and emotional issues according to the record. The applicant's attorney also asserts that the qualifying spouse is suffering financially due to the separation from the applicant. The record contains records of the qualifying spouse's school loans and a letter from her daughter's school indicating the amount of money that she has spent to date on childcare. However, there is no documentation indicating the qualifying spouse's current financial situation, such as tax returns or earnings statements. Nonetheless, the record reflects that the cumulative effect of the qualifying spouse's emotional, psychological and medical hardships, coupled with the medical issues of her family, that she has experienced during the separation from the applicant rises to the level of extreme.

The AAO further concludes that the applicant has demonstrated that his spouse would suffer extreme hardship in the event that she relocates to Brazil. The qualifying spouse was born in the United States and has lived here for her entire life. Further, the qualifying spouse has no family or friends in Brazil, and her entire immediate family and her United States citizen daughter lives in the United

States. Further, letters provided by family members demonstrate that the qualifying spouse is very close with her family. As described above, the qualifying spouse's parents are also in poor health and she assists her father with his care. The applicant's attorney also contends that the qualifying spouse will find it difficult to assimilate and to find a job in Brazil because she does not speak the language. The applicant's attorney also asserts that the qualifying spouse is concerned about the lack of adequate medical facilities in Brazil, as she requires medical assistance for her health issues. When considered in the aggregate, the hardships that would result if the applicant's wife relocated to Brazil, including length of residence in the United States, separation from her family members, having to learn a new language and assimilate into a new culture and potential issues with finding employment in Brazil due to her lack of knowledge of the Portuguese language, rise to the level of extreme hardship.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and

as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's United States citizen spouse and child would face if the applicant is not granted this waiver, regardless of whether they accompanied the applicant or remained in the United States, his support from family members and the apparent lack of a criminal record. The unfavorable factor in this matter is the applicant's unlawful presence in the United States.

Although the applicant's violations of the immigration laws are serious and cannot be condoned, the positive factors in this case outweigh the negative factors. The AAO therefore finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

However, the AAO notes that, on May 26, 2005, the applicant received an order of removal and subsequently departed the United States. As such, it is necessary that the applicant file an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

**ORDER:** The appeal is sustained.