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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

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H6

Date: NOV 23 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, 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.

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Lima, Peru, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 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 readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen and the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129F). The applicant 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 in the United States with his spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 11, 2009.

The applicant, through counsel, claims that "he has shown an adequate amount of evidence exhibiting extreme hardship." *Form I-290B*, filed July 10, 2009.

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and his wife, a mental health evaluation for the applicant's wife, medical documents for the applicant's father-in-law, a phone bill, an insurance bill, and documents pertaining to the applicant's expedited removal. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.
  - ....
- (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 [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 the present application, the record indicates that the applicant entered the United States on July 7, 2002, on a B-2 nonimmigrant visa with authorization to remain in the United States until January 6, 2003. The applicant departed the United States on September 4, 2006. On December 5, 2006, the applicant attempted to enter the United States; however, he was refused admission based on his previous overstay and was expeditiously removed to Brazil.

The applicant accrued unlawful presence from January 7, 2003, the day after his authorization to remain in the United States expired, until September 4, 2006, when he departed the United States. The applicant is attempting to seek admission into the United States within ten years of his September 4, 2006 departure from the United States. The applicant is, therefore, 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 more than one year and seeking admission within 10 years of his departure.

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 United States Citizenship and Immigration Services (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 of Immigration Appeals (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 counsel’s appeal brief dated August 7, 2009, counsel states that the applicant’s wife is unable “to relocate to Brazil. First, she does not speak the language. Second, her family ties, namely her United States citizen mother and United States citizen father both reside in Fitchburg, Massachusetts. [The] applicant’s wife is living with both parents.” In a statement dated October 21, 2008, the applicant states his wife’s “family is very important to her.” In a statement dated August 14, 2008, the applicant’s wife states “[t]he options for [her] in Brazil are minimal. [She] struggle[s] with the language barrier.” The applicant states his wife “would suffer extreme hardship...in [B]razil not being able to work, or support herself, not being able to communicate daily with others, having to need [him] to translate and speak for her in most situations, and just being away from everything she has always known.” Counsel states the applicant’s wife is suffering from depression. In a mental health evaluation by [REDACTED] dated August 6, 2009, [REDACTED] states the applicant’s wife’s “condition has improved since beginning counseling” and she expects “her to continue in counseling.” The AAO notes the applicant’s wife’s concerns regarding the difficulties she would face in relocating to Brazil.

Counsel states the applicant’s father-in-law “is physically dependent upon [the] [a]pplicant’s wife for care due to severe medical conditions as a result of an accident.” The AAO notes that the record establishes

that the applicant's father-in-law was in a motor vehicle accident on June 8, 2007, in which he suffered severe injuries and "had prolonged hospitalization/rehab/nursing home stay until finally being discharged home in 11/07." See letter from [REDACTED], dated July 1, 2009. Counsel claims that the applicant's wife "is unable to leave her father because she is his primary care-taker during the hours her mother goes to work." The applicant states his wife cares for her father when her mother is working. [REDACTED] states the applicant's wife "has been a major supporter of her father who continues to struggle with permanent disabilities." The applicant states his wife's family would suffer without her, as she "is a constant form of support for them." While the applicant's parents-in-law are not qualifying relatives for the purposes of a section 212(a)(9)(B)(v) waiver proceeding, the AAO notes the impact on the applicant's wife of having to care for her father when her mother is working. Additionally, the AAO notes the concerns of the applicant's wife regarding her father's medical condition.

The AAO acknowledges that the applicant's wife is a native and citizen of the United States and that she may experience some hardship in relocating to Brazil. Based on the record as a whole including the applicant's spouse's lack of ties to Brazil, her lack of knowledge of Portuguese, her separation from her family in the United States including her disabled father who relies on her for caretaking support, her emotional issues, and the disruption of her treatment for her mental health issues, the AAO finds that the applicant's wife would suffer extreme hardship if she were to join the applicant in Brazil.

However, the record does not establish extreme hardship to the applicant's wife if she remains in the United States. The applicant's wife states the applicant and her "family are the most important things in [her] life, and having to pick one of the other is impossible." She claims that she has suffered an "enormous emotional hardship." As noted above, the applicant's wife is suffering from depression. The AAO notes that the record establishes that the applicant's wife began seeing licensed social worker [REDACTED] "due to her difficulty coping with the separation from [the applicant]." See *mental health evaluation from [REDACTED]*, *supra*. [REDACTED] reports that the applicant's wife's symptoms include "difficulty sleeping, inability to work, isolating, and increased agitation marked by verbal altercations with her family." As noted above, [REDACTED] states the applicant's wife's "condition has improved since beginning counseling" and she expects "her to continue in counseling." The AAO acknowledges that the applicant's wife is experiencing emotional issues because of the separation from the applicant.

The applicant's wife states "[i]t has been financially very hard to support both [her] life in the United States and [her] life in Brazil." Counsel states that "[f]or the past two years, [a]pplicant's wife has continuously travelled back and forth to Brazil every couple of months to be with [the applicant]." Counsel also states that the applicant's wife "cannot continue this frequent travelling.... [The] [a]pplicant's wife was laid off and now cannot afford to travel to Brazil." The applicant's wife states it is difficult "to keep a good job when traveling in and out of the country every 3-4 months for 6 months out of the year." Counsel claims that the applicant's wife "has several bills and is struggling to pay those bills." The AAO notes that the applicant submitted a phone and insurance bill in his wife's name. Counsel claims that "[t]he absence of [the applicant] has caused a severe financial strain on [the] [a]pplicant's wife." Counsel states the applicant and his wife want to have children but they "are unable to try and have a family because of the distance between them. Neither one would be able to financially

sustain a household income while at the same time raise a family with only one parent present.” The AAO notes the financial concerns of the applicant’s wife.

The AAO has carefully considered the mental health evaluation regarding the emotional difficulties experienced by the applicant’s wife. While it is understood that the separation of relatives often results in significant psychological challenges, the applicant has not distinguished his wife’s emotional hardships upon separation from that which is typically faced by the relatives of those deemed inadmissible. Additionally, the AAO finds the record to include some documentation of the applicant’s wife’s expenses; however, this material offers insufficient proof that she is unable to support herself in the applicant’s absence. Further, the applicant has not distinguished his wife’s financial challenges from those commonly experienced when a family member remains in the United States alone. The AAO also notes that the applicant has submitted no evidence to establish that he is unable to obtain employment in Brazil and, thereby, reduce the financial burden on his wife. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship *if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation and the scenario of separation.* The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige, supra* at 886. Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. *See* 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.